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S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Appellate Case No.: 2013-002295
Unpublished Opinion No. 2015-UP-357 (S.C. Ct. App. filed July 15, 2015)

Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner, and John Love, Plaintiffs,

Of Whom George M. Lee, III, Mena H. Gardiner and John Love are the **Petitioners/Respondents**,

v.

The University of South Carolina and the University of South Carolina Gamecock Club **Respondents/Petitioners**.

JOINT APPENDIX

VOL 1

J. Lewis Cromer
Julius W. Babb, IV
J. LEWIS CROMER & ASSOCIATES, L.L.C.
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Columbia, South Carolina 29211
(803) 799-9530

Attorneys for Petitioners

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2012-CP-40-3924
Appellate Case No. 2013-002295

Linda Rodarte, J. Perry Kimball, George M. Lee, III,
Mena H. Gardiner and John Love,

of which
George M. Lee, III, Mena H. Gardiner and John Love.....Appellants,

v

The University of South Carolina & The University of
South Carolina Gamecock Club,.....Respondents.

RECORD ON APPEAL
(Redacted)

RECEIVED
MAR 17 2015
SC Court of Appeals

Julius W. Babb, IV
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2012-CP-40-3924

Linda Rodarte, J. Perry Kimball, George M. Lee, III,
Mena H. Gardiner and John Love,

of which
George M. Lee, III, Mena H. Gardiner and John Love — Appellants,

v.

The University of South Carolina & The University
of South Carolina Gamecock Club, — Respondents.

NOTICE OF APPEAL

The Plaintiffs George M. Lee, III, Mena H. Gardiner and John Love appeal the order of the Honorable G. Thomas Cooper, Jr. dated August 27, 2013 and the subsequent Order denying Plaintiffs' Motion for Reconsideration filed on September 17, 2013. Appellant received written notice of entry of the subsequent Order on September 20, 2013.

(Signature Block on Following Page.)

RECEIVED
OCT 15 2013
SC Court of Appeals

October 15, 2013

J. LEWIS CROMER & ASSOCIATES, LLC

BY: _____

J. Lewis Cromer (#1470)
Julius W. Babb, IV (#77216)
1522 Lady Street
Post Office Box 11675
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Phone 803-799-9530
Fax 803-799-9533

Attorneys for Plaintiff

Other Counsel of Record:
Robert E. Stepp, Esquire
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1310 Gadsden Street
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Columbia, SC 29211
Counsel for Respondents

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2012-CP-40-3924

RECEIVED
OCT 15 2013
SC Court of Appeals

Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner and John Love,

of which
George M. Lee, III, Mena H. Gardiner and John Love — Appellants,

v.

The University of South Carolina & The University of South Carolina Gamecock Club, — Respondents.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondents' counsel by depositing a copy of it in the United States Mail, postage prepaid, on October 15, 2013, addressed to their attorney of record, Robert E. Stepp, Esquire and Bess DuRant, Esquire, Sowell Gray, 1310 Gadsden Street, P. O. Box 11449, Columbia, SC 29211.

Monica Mulve Mcgee, Paralegal
J. LEWIS CROMER & ASSOCIATES, LLC
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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDG. NT IN A CIVIL CASE

CASE NUMBER:

J Perry Kimball
Gerge M Lee III
PLAINTIFF(S)

University Of South Carolina
University of South Carolina Gamecock Club
DEFENDANT(S)

Submitted by: _____	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case:
Additional Information for the Clerk: _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____ **Judge Code** _____ **Date** _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ **day of** _____, **20** _____ and a copy mailed first class or placed in the appropriate attorney's box on this 20 September 2013 to attorneys of record or to parties (when appearing pro se) as follows:

J. Lewis Cromer

Robert E. Stepp

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

RECEIVED
SEP 25 2013
J. LEWIS CROMER & ASSOCIATES, L.L.C.

Clerk of Court Jeanette W. McBride

SCRCP Form 4C (10/2011)

RICHLAND COUNTY FILED
2013 SEP 20 AM 9:42

SCANNED
006004

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS IN THE FIFTH JUDICIAL CIRCUIT
Linda Rodarte, J. Perry Kimbell, George M. Lee, III, Mena H. Gardner, and John Love, Plaintiffs, vs. The University of South Carolina and The University of South Carolina Gamecock Club, Defendants.	Case No. 2012-CP-40-03924 **ORDER DENYING PLAINTIFFS' MOTION FOR RECONSIDERATION**

RICHLAND COUNTY
FILED
2013 SEP 17 PM 4:15
JEANETTE W. McBRIDE
C.C.P. & G.S.

This matter comes before the Court by way of Plaintiff's Motion to Reconsider pursuant to Rules 52 and 59, SCRCP. Specifically, Plaintiffs ask this Court to reconsider its Order granting Defendants' Motion for Summary Judgment and denying Plaintiffs' Motion for Summary Judgment entered on August 27, 2013.

After careful consideration of the record in this case and the submissions of counsel, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby **DENIES** Plaintiffs' Motion pursuant to Rules 52 and 59(e) SCRCP to Alter or Amend Judgment of this Court's Order entered on or about August 27, 2013. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

IT IS SO ORDERED.

September 17, 2013
Columbia, South Carolina

G. Thomas Cooper, Jr.
Judge, Fifth Judicial Circuit

SCANNED
000005

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Linda Rodarte, J. Perry Kimball, et al)
Plaintiff,)
vs.)
)
The University of South Carolina, et al)
Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-40-3924

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Plaintiff's Attorney:	Defendant's Attorney:
Jay Babb, Bar No. 77216	Robert E. Stepp & Bess Durant, Bar No. ____
Address:	Address:
1522 Lady St, Columbia, SC 29201	1310 Gadsden Street, Columbia, SC 29211
Phone: 803-799-9530 Fax 803-799-9533	Phone: 803-929-1400 Fax ____
E-mail: jlewiscromerlaw.com Other: ____	E-mail: ____ Other: ____

2013 SEP 19 PM 4:11
RICHLAND COUNTY, S.C.
JEANETTE W. McBRIDE
CLERK OF COURT
FILED

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: SCRCP Rule 59(e) Motion for Reconsideration
Estimated Time Needed: ____ Court Reporter Needed: ☐ YES/☒ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Julius W. Babb
Signature of Attorney for ☒ Plaintiff / ☐ Defendant

September 19, 2013
Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ ____
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: ____
- ☐ Other: ____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: ____

JUDGE CODE ____
Date: ____

CLERK'S VERIFICATION

Collected by: ____ Date Filed: ____
☐ MOTION FEE COLLECTED: $ ____
☐ CONTESTED – AMOUNT DUE: $ ____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	IN THE FIFTH JUDICIAL CIRCUIT
J. Perry Kimball, George M. Lee, III, Mena H. Gardiner and John Love,	)	Civil Action No. 2012-CP040-3924
Plaintiffs,	)	
vs.	)	
The University of South Carolina and The University of South Carolina Gamecock Club,	)	
Defendants.	)	

FILED
2013 SEP -9 PM 4:11
JEANETTE W. McBRIDE
C.C.P. & G.S.

PLAINTIFFS' MOTION FOR RECONSIDERATION

Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, Plaintiffs J. Perry Kimball, George M. Lee, III, Mena H. Gardiner and John Love (collectively the "plaintiffs") hereby move this court for reconsideration of its judgment of August 27, 2013 granting summary judgment to the defendant in this case.

Plaintiffs respectfully request that this Court reconsider their motion granting summary judgment to the defendants, because the following reasons, including but not limited to: (1) the Order is inconsistent with prior decisions on the same issue by this Court[1]; (2) the "assigned reserved parking" term is not clear and unambiguous; (3) the Court failed to consider parol evidence, extrinsic evidence, course of dealing and other evidence; (4) the defendants should be equitably estopped; and (5) the defendants should be collaterally estopped.

[1] In the *Timmons et al v. The University of South Carolina et al*, (2012-CP-40-03931), the defendant moved for summary judgment on the same issue concerning the "assigned reserved parking" term of Exhibit A to the same type of lifetime contract. Judge Cooper denied the defendants motion for summary judgment by order dated July 18, 2013.

This motion is based upon the Court's failure to consider the specific arguments made in Plaintiff's Memorandum in Support of Plaintiff's Motion for Summary Judgment and in Opposition to Defendant's Motion for Summary Judgment and other documents provided to the Court at the hearing. This motion is further made pursuant to the South Carolina Rules of Civil Procedure, the pleadings, and all applicable statutory law and common law. This motion is made in good faith, supported by the sworn testimony and documents discovered in this case, supporting memoranda of law to be filed by plaintiffs' counsel prior to the hearing, and any memoranda or affidavits which they may file with the Court in support of this Motion or any arguments they may advance at any hearing.

J. LEWIS CROMER & ASSOCIATES, LLC

BY: _____

J. Lewis Cromer (#1470)
Julius W. Babb, IV (#77216)
1522 Lady Street
Post Office Box 11675
Columbia, South Carolina 29211
Phone 803-799-9530
Fax 803-799-9533

Attorneys for Plaintiff

September 9, 2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	IN THE FIFTH JUDICIAL CIRCUIT
Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner and John Love	)	Civil Action No. 2012-CP-40-3924
	)	**CERTIFICATE OF SERVICE**
Plaintiffs,	)	
vs.	)	
The University of South Carolina and The University of South Carolina Gamecock Club,	)	
Defendants.	)	

FILED
2013 SEP -9 PM 4:41
JEANETTE W. McBRIDE
C.C.P. & G.S.

This is to certify that the undersigned employee of J. Lewis Cromer & Associates, LLC, did cause to have served on September 9, 2013, a copy of the Plaintiff's Motion for Reconsideration, via email and First Class Mail, postage prepaid, to the following counsel of record at the addresses indicated:

Robert E. Stepp, Esquire
Bess DuRant, Esquire
Sowell Gray
1310 Gadsden Street
P. O. Box 11449
Columbia, SC 29211
rstepp@sowellgray.com
bdurant@sowellgray.com

The Honorable Thomas W. Cooper, Jr. (via email only)
gcooperlc@sccourts.org

Monica Mulvey Mcgee, paralegal

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: [illegible]

RECEIVED AUG 27 2013

J Perry Kimball
Gerge M Lee III
PLAINTIFF(S)

University Of South Carolina
University of South Carolina Gamecock Club
DEFENDANT(S)

Submitted by: _____ | Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented-Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: **Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____ **Judge Code** _____ **Date** _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 27 August 2013 to attorneys of record or to parties (when appearing pro se) as follows:

J. Lewis Cromer

Robert E. Stepp

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____ **Clerk of Court** Jeanette W. McBride

SCRCP Form 4C (10/2011)

SCANNED
000010

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	IN THE FIFTH JUDICIAL CIRCUIT
Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner, and John Love,	)	Civil Action No. 2012-CP-40-3924
Plaintiffs,	)	**ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**
vs.	)	
The University of South Carolina and The University of South Carolina Gamecock Club,	)	
Defendants.	)	

RICHLAND COUNTY FILED
2013 AUG 30 PM 1:52
JEANNETTE W. GRAHAM
CLERK OF COURT

This matter is before the Court on cross motions for summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. A hearing on these motions was held in Columbia, South Carolina on August 9, 2013. Julius W. Babb, IV appeared on behalf of Plaintiffs, and Robert E. Stepp and Bess J. DuRant appeared on behalf of Defendants. The Court has carefully considered the issues presented by Plaintiffs' and Defendants' motions, the arguments of counsel, and the applicable legal theories. The Court finds that Defendants are entitled to summary judgment in their favor as to the cause of action set forth in the Amended Complaint for the reasons set forth herein.

FACTS

Plaintiffs J. Perry Kimball, George M. Lee, Mena H. Gardiner, and John Love are Lifetime Members of the Gamecock Club.[1] The Lifetime Membership program was established by the Gamecock Club in the mid-1980s. In exchange for certain

[1] On June 7, 2013, the claims of Linda Rodarte were voluntarily dismissed with prejudice, and she is no longer a party to this action.

SCANNED
000011

consideration, specific rights and privileges regarding USC athletic events were promised to donors ("Lifetime Members").[2] The terms of Plaintiffs' Lifetime Membership agreements were memorialized in writing ("Lifetime Membership contract"). Each Lifetime Membership contract has an Exhibit A that lists the specific benefits and privileges to which the Lifetime Member is entitled, one of which is "assigned reserved parking."

Prior to the 2012 football season, Plaintiffs and other Gamecock Club members who parked on the apron of Williams Brice Stadium ("Stadium") were informed that they could no longer park there. The Gamecock Club informed the Lifetime Members that they could participate in a parking space selection process based on priority points, or they would be assigned alternate reserved parking in accordance with their Lifetime Membership contracts. Plaintiffs chose to participate in the priority points system and selected spaces in the Farmers' Market parking area. Each Plaintiff was allowed to select two spaces, when previously they only had one space each as a result of their Lifetime Memberships.

On June 7, 2012, Plaintiffs filed the present breach of contract action. They amended their complaint on July 6, 2012. Plaintiffs complain that Defendants have breached the Lifetime Membership agreements' provision regarding parking by requiring them to move from their existing spaces to the new parking facility across Bluff Road.

---

[2] Two levels of Lifetime Memberships exist—Lifetime Silver Spur Memberships and Lifetime Scholarship Memberships. The Lifetime Silver Spur Membership required a $40,000 or more payment, while the Lifetime Scholarship Membership required a $25,000 - $40,000 payment. For purposes of this lawsuit, the main difference between the two donor levels is that a Lifetime Silver Spur has first priority for away and bowl games, while a Lifetime Scholarship has second priority.

GD 2=2

Plaintiffs also complain that they did not receive first priority in the selection of their new parking spaces. Because of the perceived breach of their Lifetime Membership contracts, Plaintiffs ask this Court to prevent Defendants from interfering with their contractual rights regarding parking location and priority.

LEGAL STANDARD

Both Plaintiffs and Defendants have moved for summary judgment. Summary judgment is appropriate if the pleadings and other supporting documents "show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. In determining whether to grant summary judgment, a court must view the evidence and its reasonable inferences in the light most favorable to the nonmoving party. *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) (citing *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991)). The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. *Dawkins*, 354 S.C. at 69, 580 S.E.2d at 438 (citing *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)).

In determining whether a genuine issue of fact exists, a court must assume as true the evidence of the nonmoving party and draw all *reasonable* inferences in favor of that party. *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). At the summary judgment stage, "the court does not weigh conflicting evidence with respect to a disputed material fact." *S.C. Prop. & Cas. Guar. Ass'n v. Yensen*, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct. App. 2001) (citing case). When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment

GL 13

should be granted. *Ellis v. Davidson*, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct. App. 2004).

Applying this standard to the present case, I find that there are no genuine issues of material fact that must be submitted to a fact finder, and that the undisputed evidence establishes as a matter of law that Defendants did not breach the clear, unambiguous provision of the Lifetime Membership contract regarding parking.[3] Plaintiffs' contracts provide in relevant part that they will receive "assigned reserved parking." The Lifetime Membership contracts do not promise Plaintiffs specific parking spaces for the life of the agreements or that the spaces will be "at or near Williams Brice Stadium." Nor do the contracts make any statement about Plaintiffs' priority for purposes of the assignment or reassignment of parking spaces. Plaintiffs' claims are not supported by the plain language of the agreements, and therefore cannot support their breach of contract claim. Accordingly, Defendants are entitled to summary judgment as to the claim in Plaintiffs' Amended Complaint.

LAW/ANALYSIS

I. DEFENDANTS HAVE NOT BREACHED THE LIFETIME MEMBERSHIP CONTRACT REGARDING PARKING AS A MATTER OF LAW.

A. The Lifetime Membership Contracts Are Unambiguous.

"The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." *Madden v. Bent Palm Investments, LLC*, 386 S.C. 459, 464-65, 688 S.E.2d 597, 600 (Ct. App. 2010) (quoting

[3] This order relates only to the portion of Exhibit A to the Lifetime Membership contract that addresses parking. The Court makes no determination as to any other provision of the agreement.

McGill v. Moore, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009)). To determine the parties' intention, courts first look to the contractual language. *Warner v. Warner*, 280 S.C. 81, 83, 311 S.E.2d 78, 79 (1983). Contracts are "unambiguous if they are not 'susceptible to more than one reasonable interpretation . . . .'" *Stevens Aviation, Inc. v. DynCorp Int'l LLC*, 394 S.C. 300, 307, 715 S.E.2d 655, 659 (Ct. App. 2011) (quoting *TEG-Paradigm Envtl., Inc. v. U.S.*, 465 F.3d 1329, 1338 (Fed. Cir. 2006)). The determination of whether the language of a contract is unambiguous is a question of law for the court. *ESA Services, LLC v. S.C. Dept. of Revenue*, 392 S.C. 11, 20, 707 S.E.2d 431, 436 (Ct. App. 2011).

Similarly, "the construction of a clear and unambiguous contract is a question of law for the court." *Id.* "If the contract's language is clear and unambiguous, the language alone determines the contract's force and effect." *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003). A court must look only to the four corners of the contract to determine the parties' intent and "'when such contract is clear and unequivocal, its meaning must be determined by its contents alone.'" *Silver v. Aabstract Pools & Spas, Inc.*, 376 S.C. 585, 591, 658 S.E.2d 539, 542 (Ct. App. 2008) (quoting *McPherson v. J.E. Sirrine & Co.*, 206 S.C. 183, 204, 33 S.E.2d 501, 509 (1945)). Moreover, when a contract is clear and unambiguous courts must give the contractual terms contained in the document their plain, ordinary, and popular meaning *Wachovia Bank v. Blackburn*, 394 S.C. 579, 585, 716 S.E.2d 454, 457-58 (Ct. App. 2011). Courts cannot read words into a contract that "import an intent wholly unexpressed when the contract was executed." *McPherson*, 206 S.C. at 204; 33 S.E.2d at 509.

As a result, "'[t]he court is without authority to consider parties' secret intentions, and therefore words cannot be read into a contract to impart an intent unexpressed when the contract was executed.'" *Davis v. KB Home of South Carolina, Inc.*, 394 S.C. 116, 127, 713 S.E.2d 799, 805 (Ct. App. 2011) (quoting *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009)). The fact that an agreement is silent with respect to specific point does not create an ambiguity and does not permit the Court to look beyond the four corners of the contract to garner the parties' intent. *See Jordan v. Sec. Grp., Inc.*, 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993). Similarly, a court cannot look to evidence of custom or usage to contradict, vary, or explain the terms of an unambiguous contract. *Moss v. Porter Bros., Inc.*, 292 S.C. 444, 448, 357 S.E.2d 25, 27 (Ct. App. 1987); *Autrey v. Bell*, 114 S.C. 370, __, 103 S.E. 749, 750 (1920) ("The evidence of custom and usage had nothing to do with the express contract, the basis of plaintiff's claim, and could not vary or explain the same; it was unambiguous in its terms.")

Here, both Plaintiffs and Defendants argue, and the Court agrees that the contract's language is clear and unambiguous. Therefore, the plain language of the agreement controls the rights of the parties. That plain language entitles Plaintiffs to "assigned reserved parking." There is no dispute that Plaintiffs continue to have "assigned reserved parking." The contract does not grant Plaintiffs specific spaces "at or near the stadium" or in any particular location. It does not promise that Plaintiff will have any certain priority in the assignment or reassignment of their spaces. Their complaint relates entirely to the location of their new spaces and reassignment process itself. Because the agreement does not create any such rights, however, there is no

breach of the clear contractual term. Consequently, the Court grants Defendants' Motion for Summary Judgment and denies Plaintiffs' Motion for Summary Judgment.

B. The Parol Evidence Rule Precludes Extrinsic Evidence.

Although Plaintiffs argued that the agreement is unambiguous, they alternatively asserted that if the Court did not read the contracts to provide unambiguously for the rights they claimed, that the Court should declare the contract ambiguous and look outside of the agreements themselves to find evidence of an understanding with respect to the location of the spaces and the Plaintiffs' priority. (Pls.' Mem. in Supp. of Mot. for Summ. J. at 4.) To that end, Plaintiffs offered extrinsic evidence purporting to explain that the phrase "assigned reserved parking' was understood to mean that Plaintiffs would have parking on the apron of the Stadium for the life of the agreements and first priority in the assignment or reassignment of parking spaces.

This approach fails for two reasons. First, when a contract is unambiguous, a court may only look within the four corners of the contract to determine the parties' intent. The Court has already determined that the contractual provision regarding parking is clear and unambiguous, and it would therefore be inappropriate to resort to parol evidence "to determine the contract's force and effect." *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003).

Second, a contracting party may not offer evidence of prior or contemporaneous understandings to vary, contradict, or even to explain the terms of the final written agreement. "'The parol evidence rule prevents the introduction of extrinsic evidence of agreements or understandings contemporaneous with or prior to execution of a written instrument when the extrinsic evidence is to be used to contradict, vary, or explain the

written instrument.'" *Koontz v. Thomas*, 333 S.C. 702, 709, 511 S.E.2d 407, 411 (Ct. App. 1999) (quoting *Gilliland v. Elmwood Props.*, 301 S.C. 295, 302, 391 S.E.2d 577, 581 (1990)); 11 Samuel Williston & Richard A. Lord, *A Treatise on the Law of Contracts* § 33:1 (4th ed. 1999) (noting that "'parol' or 'extrinsic' evidence includes any evidence that seeks to improve an agreement or understanding arising out of the parties' words or conduct spoken or engaged in prior to or contemporaneous with the execution of the final, fully integrated written agreement . . . ."). "'The terms of a completely integrated agreement cannot be varied or contradicted by parol evidence of prior or contemporaneous agreements not included in the writing.'" *Davis v. KB Home of S.C., Inc.*, 394 S.C. 116, 128, 713 S.E.2d 799, 805 (Ct. App. 2011) (quoting *Wilson v. Landstrom*, 281 S.C. 260, 266, 315 S.E.2d 130, 134 (Ct. App. 1984)); 32A CJS *Evidence* § 1552 ("[I]n order to let in evidence of a collateral agreement between the parties, such agreement must be consistent with the terms of the writing; if the evidence tends to vary or contradict the terms of the written instrument, or defeat its operation, it cannot be received.").

Thus, the Court will not entertain the extrinsic evidence proffered by Plaintiffs.[4] First, the phrase "assigned reserved parking" is unambiguous and will be given its plain and ordinary meaning. It does not promise that the parking will be in any particular location, and it does not provide for any priority. The Court therefore cannot look to

[4] The Court also rejects Plaintiffs' argument that the language regarding parking is unambiguous only if the Court reads it the way that Plaintiffs do. The question of whether an agreement is ambiguous is a threshold question of law for the Court and is made entirely on the basis of the language used in the document. *Stevens Aviation, Inc. v. DynCorp Int'l LLC*, 394 S.C. 300, 307, 715 S.E.2d 655, 659 (Ct. App. 2011). The question of ambiguity is not affected by how the Court construes the unambiguous agreement.

extrinsic evidence to supply words that "import an intent wholly unexpressed when the contract was executed." *McPherson*, 33 S.E.2d at 509.

Second, to the extent that such evidence pre-dates the written agreements, it is barred by the parol evidence rule. If Plaintiffs intended that specific terms be included in their Lifetime Membership contracts, they should have made sure they were in the final contracts. They did not, and cannot now rely on pre contract documents or communications to dispute the meaning of "assigned reserved parking." After all, "[i]t is elementary law that all parol agreements leading to the written contract are merged in the writing. The omission of any . . . antecedent agreement does not create an ambiguity." *Welch v. Edisto Realty Co.*, 170 S.C. 31, ___, 169 S.E. 667, 671 (1933). Even if the evidence is subsequent to the writings, however, it cannot be considered because there is no contention that the written agreements were modified with respect to the parking rights,[5] and the agreements are not ambiguous. The terms of the contracts speak for themselves, and Plaintiffs cannot look to these letters or other communications with the Defendants to challenge the terms of the Lifetime Membership contracts.

C. The Parties' Conduct May Not be Used to Vary the Terms of an Unambiguous Agreement.

Plaintiffs also argue that the course of dealing of the parties is evidence of the intentions of the parties when they entered into the Lifetime Membership contracts. The Court disagrees. The best and only relevant evidence of the parties' intent is contained within the four corners of the Lifetime Membership contracts, and this Court may not

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[5] If the correspondence occurred after the execution of the Lifetime Membership contracts, the alleged promises do not become part of the contract because there was no consideration to support the modification. *Roberts v. Gaskins*, 327 S.C. 478, 483, 486 S.E.2d 771, 773 (Ct. App. 1997) (providing "modification of written contract must fulfill all of the elements required for a valid contract[,]" including consideration.).

refer to conduct that occurred after the execution of the unambiguous agreement to determine their intent.

Even if such conduct were relevant and properly considered, however, it does not support Plaintiffs' arguments in this case. The fact that Plaintiffs were assigned the same parking space for twenty-five years is not evidence of an obligation or agreement to do so. Such consistency may have been prompted by administrative convenience rather than an understanding of a contractual duty. Because custom may be motivated by any number of things that are not evidence of contractual intent, custom cannot be used to vary the terms of an unambiguous contract. *Moss v. Porter Bros., Inc.*, 292 S.C. 444, 448, 357 S.E.2d 25, 27 (Ct. App. 1987) (stating proof of custom and usage cannot be used to vary or explain unambiguous contractual terms). A court may resort to evidence of custom as an aid to interpretation of an agreement only when a necessary term is omitted. *Time Warner Cable v. Condo Services, Inc.*, 381 S.C. 275, 285, 672 S.E.2d 816, 820-21 (Ct. App. 2009) (providing proof of custom and usage may be used to supply an implied, necessary term). Here, the contracts are not missing any necessary, essential terms, and therefore, custom cannot be used to inform the Court of the parties' intent. Finally, custom cannot be used to create any obligations. *Love v. Gamble*, 316 S.C. 203, 210, 448 S.E.2d 876, 880 (Ct. App. 1994) (noting "we know of no authority for the proposition that custom and usage alone can create a contract and give rise to a meeting of the minds on all essential terms of the contract."). For these reasons, the past behavior of the parties is of no moment and does not reveal the intent of the parties, and this Court grants summary judgment to Defendants on this issue.

GT 10/10

II. THIS COURT DENIES PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT.

This Court denies Plaintiffs' Motion for Summary Judgment for the same reasons that support the grant of summary judgment to the Defendants. In addition to the arguments regarding the contracts themselves, Plaintiffs also assert that Defendants are both equitably and collaterally estopped from contesting Plaintiffs' positions. These arguments do not change the result for the reasons set out below.

A. Equitable Estoppel Does Not Affect the Contractual Rights of Plaintiffs.

For a party to prove equitable estoppel, the party must establish the following elements as to the party estopped:

> (1) conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intention, or at least expectation, that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the real facts.

Langdale v. Carpets, 395 S.C. 194, 204-05, 717 S.E.2d 80, 85 (Ct. App. 2011). Additionally, the party must prove the following elements as to himself: "(1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) reliance upon the conduct of the party estopped, and (3) prejudicial change in position." *Id.* at 205, 717 S.E.2d at 85.

There is no evidence that establishes the elements of equitable estoppel. First, Plaintiffs cannot show any conduct amounting to a false representation or concealment of material facts by Defendants. Plaintiffs rely on the testimony of Plaintiff John Love[6] and

[6] The alleged promise to Love regarding parking priority was in connection with a $10,000 donation he made in 1986, which is wholly unrelated to the Lifetime

Marion Hope[7] to support their claim that promises regarding top priority were made to them with respect to parking. Even if the Court treats this testimony as evidence of a misrepresentation, however, the remaining elements of equitable estoppel are not present. There is no evidence of any intention by Defendants that Love or Hope would act on the statements made, and no evidence that Plaintiff Love or Stuart Hope did act upon such alleged promises. Plaintiffs have not offered any evidence that they were unable to discover the truth, which would not have been difficult given the unambiguous language in their written agreements. Moreover, Plaintiffs have offered no evidence they have relied upon the conduct of Defendants or that they suffered a prejudicial change in position because of this reliance. Plaintiffs' claim for equitable estoppel fails as a matter of law, and this Court denies Plaintiffs' Motion for Summary Judgment on this ground.

B. *Rosen* Does Not Collaterally Estop Defendants in This Case.

Issue preclusion, also known as collateral estoppel, "prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same." *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). "The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." *Id.* (citing *Beall v. Doe*, 281 S.C. 363, 369 n.1, 315 S.E.2d 186, 189-90 n.1 (Ct. App. 1984)).

Membership contract which he entered into in 1990. (Love Dep. 20:20 – 21:2, June 5, 2013.)

[7] Marion Hope is the brother of Plaintiff Mena Gardiner, who is the designated heir to Stuart Hope's Lifetime Membership contract.

Plaintiffs argue that Defendants are estopped to deny that the Lifetime Member contracts are ambiguous with respect to parking on the basis of the decision in *Rosen v. The University of South Carolina, et. al.*, Op. No. 2011-UP-331 (S.C. Ct. App. filed June 27, 2011). The Court disagrees. Rosen involved the issue of whether lifetime members had to pay for parking at football games.[8] This case involves the issue of whether lifetime members are entitled to parking rights beyond those described as "assigned reserved parking." The meaning of "assigned reserved parking" was not determined in *Rosen,* nor was its determination necessary to support the prior judgment. The issues raised in *Rosen* and in this case are separate, and therefore, *Rosen* has no preclusive effect on this case. Plaintiffs cannot establish the elements of collateral estoppel, as a matter of law, and this Court denies Plaintiffs' Motion for Summary Judgment.

CONCLUSION

The parties and the Court agree that the term of the Lifetime Membership contracts relating to parking is clear and unambiguous. Plaintiffs have been provided with assigned reserved parking, and Defendants therefore did not breach the Lifetime Membership contracts. Defendants' Motion for Summary Judgment is granted, and Plaintiffs' Motion for Summary Judgment is denied.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that a) Plaintiffs' Motion for Summary Judgment is denied; b) Defendants' motion for summary Judgment is granted; and c) judgment shall be entered for Defendants on all causes of action set forth in Plaintiffs' Amended Complaint.

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[8] *Rosen* is an unpublished opinion and has no precedential value and should not be cited or relied on as precedent in any proceeding except in those in which the unpublished opinion is directly involved. Rule 268(d)(2), SCACR.

IT IS SO ORDERED.

G. Thomas Cooper Jr.
Presiding Judge, Fifth Judicial Circuit

Columbia, South Carolina

August 27, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	IN THE FIFTH JUDICIAL CIRCUIT
Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner, and John Love,	)	Civil Action No. 2012-CP-40-3924
Plaintiffs,	)	
vs.	)	**STIPULATION OF DISMISSAL WITH PREJUDICE**
The University of South Carolina and The University of South Carolina Gamecock Club,	)	
Defendants.	)	

IT APPEARING that the above-entitled matter has been resolved between Plaintiff Linda Rodarte and Defendants the University of South Carolina and the University of South Carolina Gamecock Club,

NOW, THEREFORE, upon the Motion of Plaintiffs, by and through the undersigned attorneys, by and with the consent of the Defendants, by and through their undersigned attorneys,

IT IS STIPULATED, pursuant to Rule 41(a)(1) of the South Carolina Rules of Civil Procedure, that Plaintiff Linda Rodarte is hereby dismissing her Amended Complaint in the above-entitled action, with prejudice.

[signature page follows]

WE SO MOVE:

J. LEWIS CROMER & ASSOCIATES, LLC

By: Julius W. Babb

J. Lewis Cromer
Julius W. Babb, IV
1522 Lady Street
Post Office Box 11675
Columbia, South Carolina 29211
(803) 799-9530

June 7, 2013

Attorney for Plaintiffs Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner, and John Love

WE CONSENT:

SOWELL GRAY STEPP & LAFFITTE, LLC

By: BDR

Robert E. Stepp
Bess J. DuRant
1310 Gadsden Street (29201)
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorney for Defendants the University of South Carolina and the University of South Carolina Gamecock Club

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4003924

Linda Rodarte J Perry Kimball PLAINTIFF(S)	University Of South Carolina University of South Carolina Gamecock Club DEFENDANT(S)

Submitted by: _____	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** *(CHECK REASON)*: ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** *(CHECK REASON)*: ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

Motion for Summary Judgment withdrawn.

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

RICHLAND COUNTY FILED
2012 NOV -8 AM 10:42
JEANETTE W. McBRIDE C.C.P. & G.S.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge L. Casey Manning **Judge Code** 2061 **Date** 11-8-12

For Clerk of Court Office Use Only

This judgment was entered on and a copy mailed first class or placed in the appropriate attorney's box on this 8 day of Nov, 20 12 to attorneys of record or to parties (when appearing pro se) as follows:

J. Lewis Cromer

Robert E. Stepp

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

RECEIVED
NOV 12 2012
CROMER BABB & ASSOCIATES, L.L.C.

Court Reporter

Jeanette W. McBride

Clerk of Court, Jeanette McBride

SCRCP Form 4C (10/2011)

SCANNED

J. Lewis Cromer
PO Box 11675
Columbia, SC 292111675

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4003924

Linda Rodarte	University Of South Carolina
J Perry Kimball	University of South Carolina Gamecock Club
PLAINTIFF(S)	DEFENDANT(S)

RICHLAND COUNTY FILED
2012 SEP 17 PM 1:51
JEANETTE W. McBRIDE C.C.P. & G.S.

Submitted by: _____	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION The defendants' motion to dismiss under Rule 12(b)(6) is denied. The complaint, as a whole, states a valid claim for relief

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____ Judge Code 2143 Date 9/17/12

For Clerk of Court Office Use Only

This judgment was entered on and a copy mailed first class or placed in the appropriate attorney's box on this 17 day of Sept 20 12 to attorneys of record or to parties (when appearing pro se) as follows:

J. Lewis Cromer

Robert E. Stepp

ATTORNEY(S) FOR THE PLAINTIFF(S)

RECEIVED
SEP 20 2012

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. McBride

Court Reporter J. LEWIS CROMER & ASSOCIATES, L.L.C.

Clerk of Court , Jeanette McBride

SCRCP Form 4C (10/2011)

000039 SCANNED

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND)

LINDA RODARTE, J. PERRY KIMBALL, GEORGE M. LEE, III, MENA H. GARDINER, AND JOHN LOVE,

PLAINTIFFS

VS.

THE UNIVERSITY OF SOUTH CAROLINA AND THE UNIVERSITY OF SOUTH CAROLINA GAMECOCK CLUB,

DEFENDANTS.

TRANSCRIPT

OF

RECORD

2012-CP-40-3924

August 9th, 2013
Columbia, South Carolina

B E F O R E:

THE HONORABLE G. THOMAS COOPER, JR., Judge.

A P P E A R A N C E S:

JAY BABB
ESQ.
Attorney for the Plaintiffs

ROBERT E. STEPP and BESS DURANT
ESQ.

Attorneys for the Defendant

KAREN AMBROZIAK
Circuit Court Reporter

Transcribed by Pamela E. Green, Circuit Court Reporter

INDEX

(There were no exhibits marked or testimony taken during this hearing.)

PROCEEDINGS

THE COURT: Linda Rodarte.

I've got different captions on 3924. I got Perry Campbell, George Lee, Mena Gardiner, Mena Gardiner, John Love, and then another caption I've got Linda Rodarte.

MR. STEPP: Linda Rodarte has -- we've stipulated a dismissal on her claims, Your Honor. So, she's not in the case.

THE COURT: Oh, she's not in the case?

MR. STEPP: No, sir.

THE COURT: All right. So, we're down to Perry Kimball, George Lee, Mena Gardiner, and John Love.

All right. Cross motions for summary judgment?

MR. STEPP: Yes, Your Honor.

THE COURT: All right. I'll, I'll hear them in any order in which you --.

MR. STEPP: Do you have any preference, Jay?

MR. BABB: I don't. It may make more sense for y'all to present those motions on the judgment first.

MR. STEPP: Well, since my motion is the more meritorious, Your Honor, I'll proceed first.

Your Honor, I'm Bobby Stepp. I represent the defendants in this case, the University of South Carolina and the Gamecock Club.

Bess Durant with my law firm is here with me.

Ed Adams, who's in the Office of General Counsel at The University.

And this is Jim Petrus, who is with the Athletic Department at The University of South Carolina and is the ticket manager.

Your Honor, a month or so ago, or maybe a little bit more, I was before you on a similar case, the Timmons case --

THE COURT: Right.

MR. STEPP: -- which we argued at length and, and you've entered an order on that.

But this case is different. Although it arises from the same contract, the issues are different, the procedural posture is different, and the positions of the parties are different. So, we really are here to take a fresh look at a particular issue that I think is keyed up for decision by Your Honor either on a motion for summary judgment or in some other capacity without the necessity of a trial.

The question of -- in this -- and this is a breach of contract case, and it arises from lifetime membership contracts signed by each of the plaintiffs. Sometimes I may just say contract or sometimes contracts.

There -- with respect to what we're here about, all

of the contracts are identical. They were signed over a period of time from about, I think, 1986 to 1990, somewhere, somewhere in that timeframe, and each of the plaintiffs has his or her own contract, and I'll show you the pertinent part.

My colleagues told me when I was here before that I didn't make this big enough for anybody to see but to me. So now I've got it supersized.

The lifetime membership contracts all have a common Exhibit A, which sets out the specific terms of the agreements between each of the plaintiffs and The University and The Gamecock Club, and the issues that are raised in this case relate only to parking. That's all we've got. Not about seat licenses, not about bowl ticket priority, or any, anything like that. The question is parking, and as Your Honor may recall, but we'll see, Exhibit A to each of the agreements provides that the plaintiffs will receive assigned reserved parking, and that's all it says.

These plaintiffs contend that the defendants have breached their agreement with respect to the location of their parking and the priority with which they are to be assigned new parking. Any charge for parking is not an issue in this case.

So, the question, fairly stated I think, is that the

agreement between the parties prohibit The University or The Gamecock Club from changing the location in which the plaintiffs park, and does the agreement provide for any particular priority in the assignment of new parking in the event that a change is made. Those are the two issues that are raised in this pleading in this case, and with respect to those issues, both sides have moved for summary judgment, and, of course, that's another big difference between this case and the Timmons case.

In the case before you, both the plaintiffs and my clients agree that the contract is not ambiguous. So, both parties have moved for summary judgment asking the Court to interpret the contract based upon the plain and ordinary meaning of its language set out within the four corners of the document and without reference to any extrinsic evidence of, of any variety.

So, we think the issue is ripe for a determination by Your Honor and the, the task of the Court will be to determine whether assigned reserved parking includes a promise with respect to priority, and a promise with respect to location such that those parking rights could not be changed at any time during the duration of the, of the agreement.

Now, that's, that's all that the contract provides, assigned reserved, assigned reserved parking. It doesn't,

of course on its face, say anything about where the parking will be and nor is there any reference anywhere else in the contract, and it doesn't say anything with respect to parking about any priority.

Now, Your Honor may recall from the other case and you'll see here that, with respect to certain of these other benefits, a certain priority was, in fact, promised. For example, first priority on away bowl game tickets, first priority for away in tournament game tickets, first priority on any other tickets involving any other South Carolina Athletic event. But it is -- conspicuously, the reference to assigned reserved parking does not contain any reference to any priority.

So, that's what you've got. You've got these three words, assigned reserved parking, and the question is whether those can be read, based upon the agreement itself, and without resort to any extrinsic or external evidence to mean what the plaintiffs say that it means.

Now, as Your Honor well knows, because if this contract is, in fact, unambiguous, which both parties say that it is, then the, the purpose of the Court is simply to give effect to what the parties agreed to, and, again, I -- indulge me. But, you know, the reason that the law favors written agreements is because that's supposed to cut down on disputes about what it was that the parties

agreed to.

So, so, written agreements are supposed to be interpreted and applied as written provided they are not ambiguous, and Courts are only permitted to sort of look beyond the four corners of the document to determine some agreement that was not expressed under very limited circumstances, which do not apply here. There is no ambiguity in assigned, assigned reserved parking, and the parties to the case agree that there is no ambiguity.

The plaintiffs, in fact, state in their memorandum that -- plaintiffs assert that the contracts are unambiguous to the extent that they provide plaintiffs with the specific assigned parking they received under the contract.

THE COURT: What are you referring to?

MR. STEPP: Plaintiff's memorandum in support of their motion for summary judgment Page 4.

THE COURT: All right.

MR. STEPP: Now, let me try to walk along that a little bit, and I'll come to that in due course.

THE COURT: Just---

MR. STEPP: But the question---

THE COURT: I don't have it.

MR. BABB: Your Honor?

THE COURT: Never gave it to me.

MR. BABB: I've got a copy.
THE COURT: Yes, sir.
You want me to read it?
MR. BABB: Yes, sir.
THE COURT: Give it to me.
Did you find one also, Mr. Stepp?
MR. STEPP: I did. I sent you a copy directly, Your Honor. So, you should have it.
THE COURT: E-mailed?
MR. STEPP: I hand delivered it.
THE COURT: To the Clerk's Office?
MR. STEPP: No, to your office. I filed it with the Clerk's Office and sent a copy to your office or I was suppose -- I was suppose to.
MR. ADAMS: May I approach the bench, Your Honor?
I'll hand you a copy. This is just a copy.
THE COURT: Now, back to your reference.
Page 4?
MR. STEPP: Yes, sir, Page 4 of the plaintiff's memorandum, and I'll clue you in to the right part of the page. They say the first, the first full paragraph on page -- I'm sorry. The top of Page 4.
THE COURT: All right.
MR. STEPP: The first full sentence. The plaintiffs assert that the contracts are unambiguous --

THE COURT: Okay.

MR. STEPP: -- to the extent they provide plaintiff with specific assigned reserved parking space they receive under the contract --

THE COURT: Okay. I got it.

MR. STEPP: -- which was the best available on the apron of the stadium.

THE COURT REPORTER: I'm sorry. I couldn't hear the last sentence that you said.

MR. STEPP: I'm sorry.

Which was the best available on the apron of the stadium.

THE COURT REPORTER: Apron?

MR. STEPP: Apron.

THE COURT REPORTER: Thank you.

MR. STEPP: So, in the, in the plaintiff's view of the law and their motion for summary judgment, they want you to take assigned reserved parking and read into it a promise of a specific parking space that would never be changed for the duration of the contract, which, for these contracts, were for lifetime and life member plus one designated beneficiary. That's a pretty long time.

So, what the contract actually says is assigned reserved parking, and what the plaintiffs want you to say -- read it to say is permanent free use of parking

space whatever, 779, I'll just pull at random, in its current location on the apron of the stadium for the duration of the agreement.

Now, of course, that is not obviously clearly manifested and not what the agreement provides, and there's no basis, within the four corners of the document, for the Court to read the agreement to contain any such promises. The silence -- the fact that the agreement is silent with respect to location, with respect to priority, with respect to permanency does not support any inference that there was some other agreement about that.

In fact, as Your Honor I'm sure can appreciate, the fact that the written agreement does not speak to those things can only really be interpreted to mean that there was no agreement about those things, and in this case, unless the plaintiffs can establish that there was an agreement that they would have their specific parking spaces for the life of the agreement, and then, I guess if they were changed, some sort of specific priority, then the defendants would be entitled to summary judgment. You know, the omission of something from an agreement doesn't even create an ambiguity unless it's an essential or material term and much, much less support a reading of the contract for the Court to read something that essentially isn't there.

So, that, that's certainly true in this case, and particularly to, to ask the Court to read something about priority into the agreement, is, is, I think, way off base because priority is, is addressed and certain of the other benefits. And, so, there's no basis to conclude that there was some inadvertent omission of a particular priority with respect to that, to that promise.

So, I would respectfully suggest that there's no basis for the Court to read the agreement the way the plaintiffs would ask the Court to read it based upon the plain and ordinary language that is just in there that the parties used.

So, we think just the opposite, of course. If the Court approaches the contract based upon its plain and ordinary language, it simply provides for assigned reserved parking. It does not require The University to place that parking in any particular location. It does not require The University never to change location, and it does not bind The University to provide any sort of priority with respect to parking in the event that it is reassigned.

So, on that basis, we think judgment should be entered for the defendants with respect to all the issues in this case about parking, location, and priority.

Now, I mentioned, if you go back to Page 4 of the

plaintiff's memorandum, they, they hedge their bet a little bit, and, and I think it's fair to say that the plaintiff's position is the agreement was unambiguous if you read it the way we want you to read it. But if you don't read it the way we want you to read it, then it, then it is ambiguous. That's in the first full paragraph on Page 4 "alternative positions."

But you really can't have it both ways. The question of whether an agreement is ambiguous is a question of law for the Court, and it is made on the basis of the language used in the contract. It is not a function of what the outcome would be. That puts the cart way before the horse.

So, the question simply is, is the agreement ambiguous or not. If it is not, then the result is whatever the result would be. It's not ambiguous one way and unambiguous the other. In this case, the contract stands alone, and we, of course, submit, as does the plaintiff, that it's really not ambiguous.

Now, the plaintiffs offer a couple of other arguments that I want to address because I don't think they change anything, but I want to, I want to talk about them.

In connection with the assertion that the agreement might be ambiguous, the plaintiffs ask you to look to what they say was the course of dealing between The University

and the plaintiffs with respect to the location of their parking. So, they're asking you to look to extrinsic evidence, but they're only asking you to look to the evidence of this course of dealing, which was that the plaintiff's parking didn't change over time. Well, assuming that to be true, that doesn't change anything.

First, if the agreement is unambiguous, you don't even look outside of its four corners, of course, and you wouldn't look to any, any extrinsic evidence including course of dealing evidence.

Secondly, under the case law, course of dealing is only referenced where -- to interpret a contract. Not to create an obligation. And then, generally, only where there is some missing essential term. For example, this is what you, what you see I think in some of the cases. You've got an agreement between two parties for repayment of the debt, and it says that the debt shall be repaid monthly, but it doesn't say what day of the month repayment is suppose to be made.

So, at some point down the road, after many payments have been made, the creditor asserts a default based upon late payment. The Court could look to the date that the payment had actually been made over the course of a relationship to infer from that the agreement as to, or the understanding as to when the payment was due. But you

can't look to course of dealing to create an obligation, and that's what the plaintiffs are asking you to do here.

You know, if you think about it, the question is is there any evidence from which the Court could infer that The University and The Gamecock Club expressly agreed never to change the plaintiffs' parking spaces, and expressly agreed to provide them with a certain priority in the event that they did, and any evidence that would support that inference obviously would have to be evidence that makes it more likely than not that that was the case. Otherwise it's just mere speculation and really isn't evidence at all. It's simply not probative of the issue before the Court.

So, here what you've got is the fact that, for however years, the plaintiffs' parked in the same parking spaces. Well, the plaintiffs want you to infer from that, assuming that you find the contract is unambiguous, of course, that, therefore, The University must agree never to change their parking space. But it's equally inferable, just as likely, that the parking spaces weren't changed because there wasn't any reason to change. There wasn't any need to change, and, therefore, the subject never came up. But there's certainly nothing in that course of dealing that would be evidence of a binding commitment and agreement by The University never to change

those parking spaces.

So that -- even if Your Honor were to look to the course of dealing between the parties as offered to you by the plaintiffs, it doesn't support the contention that there is another promise in the agreement that should be enforced against the defendants. It's simply evidence that, for whatever reason, these spaces weren't changed.

THE COURT: Factually, remind me, apparently the plaintiffs' parking space, place has been changed?

MR. STEPP: Yes, sir, I, I -- I should of covered that.

THE COURT: And factually how did that come about?

MR. STEPP: Yeah, all these plaintiffs parked -- there were some parking spaces on what we call the apron of the stadium, the tarmac around Williams Brice. All of that, with respect to The Gamecock Club at least, was eliminated as of the last football season, and the new parking facility across Bluff Road was opened.

THE COURT: Now we're at the -- I mean what happened physically?

MR. STEPP: Physically the plaintiffs participated in a selection process.

They moved across Bluff Road?

THE COURT: No.

What happened to the old ones?

MR. STEPP: Oh, yeah. Well, there's just no parking there now. There's some---

THE COURT: There's still an apron?

MR. STEPP: There's still an apron, but there's not Gamecock Club parking on the apron anymore.

THE COURT: Why not?

MR. STEPP: Well, I think it's for security reasons and other reasons. Matter of fact, they're reconfiguring part of the---

THE COURT: Nobody is there?

MR. STEPP: Right.

THE COURT: Nobody's on the apron.

MR. STEPP: No.

THE COURT: Nobody's on the apron?

MR. STEPP: Nobody in The Gamecock Club is there. Coach Spurrier parks on the apron of the stadium. So do the other coaches. People with game day responsibilities, officials, people like that, still park on the apron of the stadium. But ticket holders who don't do any more than just, you know, buy their tickets and come to the game no longer park on that area. It wasn't just done to these plaintiffs, Your Honor. It was done, done to everybody, lifetime members and non-lifetime members.

Okay. Does that answer your question?

THE COURT: I just wondered what happened to the old

ones. If it was torn up or---

MR. STEPP: Well, I think, I think -- and I get them confused. But I think there's a big general area that sits where somebody use to park at this point.

Yeah, we submitted, Your Honor, the affidavit of Marcy Burton in opposition to the plaintiff's motion for summary judgment, and I'll get you a copy of that. It's attached to our memorandum as exhibit something or other.

THE COURT: Well, if it's attached I'll be---

MR. STEPP: Exhibit E, and in Paragraph 7---

THE COURT: Wait a minute. Exhibit E is --?

MR. STEPP: Exhibit E to our memo.

THE COURT: Exhibit E is the memorandum of agreement?

MR. STEPP: No.

THE COURT: That would be John Love.

MR. STEPP: No, I think that's the plaintiff's. Well---

THE COURT: In support---

MR. STEPP: Let me just hand you---

THE COURT: Memorandum in support of defendant's motion for summary judgment.

MR. STEPP: Yeah, it should be. Affidavit of Marcy Burton. I'm looking at a sticker that says Exhibit E at the bottom.

THE COURT: Mr. Stepp. Mr. Stepp.

MR. STEPP: Well, obviously we have, we have a problem. I'll get you---

THE COURT: Well, this is your memorandum?

MR. STEPP: Yes, sir, it is.

THE COURT: Have you got two Exhibit E's?

MR. ADAMS: If the Court will indulge me, I'll find it.

THE COURT: That's fine. I'm not going to read it until tonight.

MR. STEPP: I'll make sure that, that we give you something that's got it.

But in her affidavit, Ms. Burton just says beginning with the 2012 USC football season, parking on the apron around the stadium will no longer be available to Gamecock Club members including the plaintiffs. Instead, Gamecock Club members may be able to select parking in one of the other parking facilities. So, no, nobody in the Gamecock, in The Gamecock Club---

THE COURT: So, factually there's still assigned reserved parking?

MR. STEPP: They still have assigned reserved parking, yes, Your Honor. It's just in a different, different location.

MR. ADAMS: We did have two Exhibit E's, Your Honor. It was for the purpose of confusing the plaintiff. Not

the Court.

MR. STEPP: Thank you, Your Honor.

THE COURT: All right. Now, are you, are you familiar with this, Mr. Babb?

MR. BABB: Yes. Yes, Your Honor, I am.

THE COURT: All right. Go ahead.

MR. STEPP: So, yeah, let me, let me, let me make clear, I probably may have assumed too much, the plaintiffs still have assigned reserved parking.

THE COURT: And if I assume too much, I guess that's because you know where I went to undergraduate school.

MR. STEPP: Not at all, Your Honor. I just assumed that you were way ahead of me as you normally are.

All the plaintiffs still have assigned reserved parking. It's just in a different space, and now, in fact, they have two parking spaces and they use to only have one parking space, and both of those parking spaces are assigned to them, reserved for them, and if anybody else parks there, they can be removed and kicked out. So, they still have assigned reserved parking. Absolutely. It's just in a different place.

The other -- they're two other arguments I want to touch on briefly that the plaintiffs raise. Your Honor, one is equitable estoppel, and the plaintiffs argue, as best I can understand it, that somehow or another the

defendants made some misrepresentation to the plaintiffs, upon which they relied to their detriment, about the location of their parking space.

If you look to the defendant's memorandum, they point to affidavit of one of the plaintiffs, George Lee, as the evidence of misrepresentation. But if you look at Mr. Lee's affidavit, which is the, which is Exhibit E to the plaintiff's memorandum, it, it, it doesn't contain any evidence of a misrepresentation. He simply says, since entering the contract, I was given Priority Parking Spot Number 314 and had such of use priority up until the Summer of 2012. There's no reference in George Lee's affidavit to any statement made by anybody at The University upon which he relied in making any decision to part with any money or do anything else.

So, equitable estoppel doesn't apply because there is absolutely no evidence before the Court that would support a finding by the Court that the defendants have done anything that would subject them to equitable estoppel.

The final issue that the plaintiffs raise, Your Honor, is collateral estoppel, and they base that on the decision of the South Carolina Court of Appeals in the Rosen case, and I think we, we've talked about that previously.

The first point about the Rosen case, which I've said

to Your Honor before, is that it doesn't have any precedential value. It doesn't establish anything. It's an unpublished opinion. Across the face of it it says, in bold type, this opinion has no precedential value. It should not be cited or relied on as precedent in any proceeding except as provided by Rule 268(b)(2) of the appellate rules, which has nothing to do with what we're, what would apply here.

So, the Court's not bound by the decision of the Court of Appeals in the Rosen case regardless of what it might say or not say. But, more importantly, the Rosen case doesn't address the issue that's before this Court, which is whether the location, about the location and priority of parking.

The parking charge was tangentially involved in Rosen, but there's nothing in the Rosen opinion that can be read to say that the phrase assigned reserved parking is ambiguous with respect to location or priority, and those are the only two questions before the Court, and Rosen simply does not speak to them.

You know, I think this collateral estoppel argument is really curious because what the plaintiffs say is that, based on Rosen, the defendants should be collaterally estopped from arguing that the contract is not ambiguous. But the plaintiffs, in this case, take the position that

it is not ambiguous, and all we've done is agree with them.

So, I've never seen collateral estoppel applied to prevent one party from agreeing with the position asserted by the other one. So, I don't think that has any relevance whatsoever. The opinion really doesn't address the only two issues of the case, and Your Honor is free to draw your own conclusions.

So, Your Honor, in conclusion, we think the Court should construe the unambiguous agreement to determine whether the phrase assigned reserved parking includes a promise with respect to the location of the parking, and includes a promise with respect to the priority of the parking. And if Your Honor concludes that the unambiguous agreement between the parties does got contain those promises, then there's no basis for a claim for breach of contract, and Your Honor should enter summary judgment for the defendants.

Thank you.

THE COURT: Just looking at his prayer --?

MR. STEPP: Yes, sir.

THE COURT: Maybe I better hear from you, Mr. Babb.

Enjoining and restraining the defendant from interfering with the contract rights, the right to members of The Gamecock Club, particularly the rights of such

members to have highest priority for parking within locations at or near Williams Brice Stadium, and to determine that that priority within the class of like members themselves.

All right. Mr. Babb, let me hear from you.

MR. BABB: Your Honor, may it please the Court?

THE COURT: Actually -- yeah. I'm looking at Paragraph 12 of your complaint, and that's where the priority issue comes up. You allege that your clients will be "bumped down" in priority to a lesser attractive more distant parking locations under the new priority plan, which no longer allows life members.

Anyway, I think that's the gravamen of your complaint.

MR. BABB: Yes, Your Honor, if I can explain a little bit on that.

When the plaintiffs first got light of, of -- that there was gonna be a change in the parking and they were gonna be moved off the, the apron, so to speak, the area immediately surrounding the stadium -- and really the time prior to that, the way the parking worked was the lifetime members had the same parking for the entire duration of the contract, which was the best available parking there was. That's what they'd get assigned.

And, at that time, there was priority within -- I

believe there was priority within the lifetime members, but they're carved out. They're first. They're separate and apart from the annual Gamecock Club---

THE COURT: What do you mean you believe there was priority among the Gamecock members?

MR. BABB: Your Honor, there's two classes of lifetime -- and I say Gamecock members. I'm sorry, Your Honor. Lifetime members.

There's two classes of lifetime members.

THE COURT: Silver's first and then, the---

MR. BABB: Full scholarship.

THE COURT: Full scholarship.

MR. BABB: Lifetime full scholarship, yes, Your Honor.

So, there was two different giving levels among lifetime members and that's what I base that on. However, they're carved out and they've always been carved out from the rest of the populace because they entered a contract to, to obtain that membership and also to obtain certain rights set forth in the contract in the, in the attached Exhibit A.

THE COURT: And what was your client?

MR. BABB: Sir?

THE COURT: What was your client?

MR. BABB: My clients, I think there was full

scholarship and I believe lifetime Silver Spur.

THE COURT: You had two?

MR. BABB: There's, there's four.

THE COURT: Oh, you're right. Okay.

MR. BABB: Yes, sir, there's multiple clients and their contracts are attached, and I believe we set that out as to what the, the level is within the attachment both in my memorandum as well as theirs.

THE COURT: All right.

MR. BABB: So, they've been carved out. It's -- the entire duration of this for Mr. Love, for instance, I think his contract was entered in 1990. For Ms. Gardiner, and really her father, Mr. Hope, she's the beneficiary under the contract, it was I believe 1986. So, a long time period. And, and during that time period, the parking wasn't disturbed. They were given the assigned reserved best available. That's what they were assigned and reserved.

Now, 2012, they're moving off the apron. They put them across and in the market over there where there's the new parking they did across the street. At that time, what they, what they do is they take, they take the parking, the lifetime members, and insert them into the priority with the for eight -- for Gamecock Club members.

The parking they received in year one was, we allege,

was slightly worst maybe than what they would have gotten or worst position than they would have gotten before, and maybe it's not the worst position there is out of all the memberships because they were given a priority level based on their amount given in consideration for the contract.

However, as the years go by, other people donate, their, their priority people get pushed even further down because now it's changed. It's not just that they moved them across the street. What's changed is they've now been injected into the annual Gamecock Club priority, parking priority list, and, and instead of being carved out, as they've always been, you know, first priority as a class, as a class of lifetime members, they're now intermingled, and that's why all this initially was filed to try to stop that, and, of course, that was before the football season, and it's continued on until this point now.

So, I think that background is very important to the case because it's -- that's -- the concern isn't just what happened to them last season. It's what's going to continue to happen to them now that they've been put into this general populace of The Gamecock Club, the annual members, the noncontract members, the individuals who did not enter a lifetime contract and agreement with The University, and who aren't contractually bound such as

lifetime members are such as The University is to provide the benefits they promised the lifetime members.

Mr. Stepp said several times that we both agree the contract's unambiguous, but, Your Honor, I would like to clarify that. Our position is, of course, for our motion for summary judgment, is that we believe the contract is, is unambiguous in our favor and we said that's, that's how we -- my clients have always read it, felt that way, and how I have argued on their behalf.

It's assigned reserved parking. They were given assigned reserved parking, almost redundant language, parking. Not you'll be provided a parking spot. Assigned reserved parking. And what they were assigned and reserved was the best parking spot available. And if The University can't provide them on the, on the apron, the best parking spot available, then they need to provide them the best alternative, and that's why we feel it's unambiguous, Your Honor, because, under the plan they implemented, they injected them to the general populace -- Gamecock Club annual, annual members and letting other non-lifetime members get above them. They're not getting their promise in the contract.

However---

THE COURT: Is there a factual basis for that, what you just told me?

MR. BABB: About them being injected into the---

THE COURT: Yeah, being -- you said injected and placed in a huge parking lot and other contributors now taking priority over them in terms of proximity to the stadium.

Is that what you're saying?

MR. BABB: Yes, Your Honor.

THE COURT: Is that a factual statement?

MR. BABB: As far as being put into the, the general populace, that's what's been asserted to me by the opposing counsel and their clients that that's what they've done, they've put them into the populace, that, that was the whole basis---

THE COURT: And that wasn't my question.

The general populace, the unholy and unwashed, but the -- but are they given -- I'm asking for facts because I'm factually deficient.

Are they given the best parking spaces within this melange of ticket holders?

I mean they got the front row or not?

I don't know.

MR. STEPP: No, Your Honor.

THE COURT: Who gets the---

MR. STEPP: They get---

THE COURT: Who gets the front row, Johnny Come

Lately, Johnny Come Lately?

MR. BABB: There's, there's intermingling between the, both of them, both the non-lifetime and the lifetime members for the front row so to speak. I don't---

MR. STEPP: Your Honor?

MR. BABB: I don't have a document in front of me.

THE COURT: Through discovery, have you determined that?

MR. BABB: Yes, Your Honor, and it may be, it may be best to have a list of who has parking spots on what locations.

THE COURT: I'm just, I'm just wondering if your clients, in other words, were given the best priority within this new parking area. I don't know. I'm surprised you don't know.

MR. BABB: Your Honor, we were told no, but I don't have a document to put in front of you to back that up.

THE COURT: Well, your clients, obviously, went to football games last year. I assume they did.

MR. BABB: Yes, sir.

THE COURT: Were they on the back row or the front row?

MR. BABB: No, Your Honor. They're somewhere in what's called Quad 2. So, there's, there's more -- Premium Parking North, Premium Parking South. I didn't

know if you had a map up there. But there's Premium Parking North and Premium Parking South, and then there's Quad 1 and 2, which are back behind that, farther away from the stadium.

Some of my clients are in the South Premium Parking, not the front row for their parking spots, and I can, I can submit a, submit a map to the Court, Your Honor, after the hearing when I get back to the office. But the---

THE COURT: Well, why don't we wait till the first football game and you can take me out there.

Go ahead.

MR. BABB: And -- but, but some of them, Your Honor, some of the folks here are actually back in Quad 2 I believe.

What they were told when they initially went through the selection process for this parking problem, which they had never done cause they'd been in the same parking spot, was yes, we, we've marked off spots for the lifetime members if you choose to, to do that. But what they weren't told was back in Quad 2.

Clearly not the first or best available parking because there's -- and I'm gonna estimate here, Your Honor, but it's been litigated in the Rosen case, and a discussion here, but it 200, maybe 210, 220 lifetime members. So, there's many more spots than even that in

Premium North and South. But the part they blocked out was, was this Quad 2 section.

So, then they're left with the dilemma of do I accept parking that I know is deficient pursuant to the contract because they're saying they set this aside for lifetime or do I -- or what they told me is I'll have better parking if I go into the general populace. So, that's, that's been the -- that's how the process got started in 2012 that led to this litigation, Your Honor.

And as I was stating, while, while we do -- while we did file a motion for summary judgment, we have argued that the contract's unambiguous for the reasons I've stated earlier. We believe, at a minimum, in the alternative, at a minimum, it is ambiguous. But it's not unambiguous in their favor, and to support that, to support that we, we cite what the Rosen case also cited to, which is that you can look at customs, practice, and usage in interpreting the, the meaning of the contractual terms.

In that case, it was determined and, Your Honor, for clarity sake, the Rosen case, that issue was over assigned reserved parking. However, it was dealing with having to pay for parking, which was back in maybe 2007 when they implemented that for the lifetime members. This case is, is over, of course, them being moved. So, there

is a difference in that respect. However, it's the exact same term in Exhibit A we're talking about here, assigned reserved parking.

The Court, in the Rosen case, found that term to be ambiguous, and as to a payment issue, but they found that to be ambiguous, excuse me, ambiguous and we believe here, at a minimum, that it is at least ambiguous and we believe, because of looking at the customs, practices, and usages of what The University has done, The University, its custom and practice, has not been to put the Gamecock -- the lifetime members within the priority list for the non-lifetime members. That allows us to bring in parole evidence, extrinsic evidence to determine that ambiguity, Your Honor.

There's also a discussion about the equitable estoppel, Your Honor. They say there's no evidence. I've actually got a document and -- that I would like to present to the Court, and counsel has it, but I do have a copy for them as well.

THE COURT: Well, if you want me to read it you better hand it up.

MR. BABB: Yes, sir.

THE COURT: What is this?

MR. BABB: Your Honor, this is a March 5th, 2008, letter to the lifetime members from Chris Ryder, lead

executive director of The Gamecock Club. Within this letter, he is doing several things.

One of them, inviting them to a reception to the, a reception for The Gamecock Club members, but also telling him, as in the past, a life member of The Gamecock Club can expect -- it goes on to delineate a list here. It talks about the two categories we discussed, Your Honor.

It talks about the -- it talks about the priority to, of, of -- within the lifetime membership that I also discussed, and the third bullet point is life members are at the top of all Gamecock Club priority.

This is from The Gamecock Club itself, Your Honor, and we, we believe this is evidence of what -- exactly what we're saying, that they're at the top of the priority, that they do -- because of their contracts, they've been carved out and provided that, that position, Your Honor.

I also have some deposition excerpts that -- I've only actually got one copy and I can provide a copy to opposing counsel. I'm not gonna be quoting directly from, from them, but I do want to -- I'll submit them to the Court and I can do so now or after the hearing, Your Honor.

But it continued -- I'm sorry.

MR. STEPP: Well, Your Honor, I haven't seen these.

I don't know what they are. They weren't attached to the memorandum. So, I'm somewhat surprised and I just need, need to know. I mean obviously Your Honor can take them if you want to, but I do need copies of them so I can peruse them.

THE COURT: Whose deposition?

MR. BABB: Your Honor, it's excerpts from the deposition of Marion Pope, who is the brother of Ms. Gardiner, and who also was with their father during negotiation time of the contracts, and then the other is John Love.

THE COURT: The brother of the father?

MR. BABB: He's the son, he's the son of, of Mr. Hope, who was the, the initial contract holder. Ms. Gardiner's actually the beneficiary. Mr. Hope passed away and she received -- she, she became the beneficiary at that point.

THE COURT: Why was his deposition taken?

MR. BABB: Sir?

THE COURT: Why was his deposition taken?

MR. BABB: His deposition was taken because he was there with his father during the time of the negotiation of the contract. He's helped, if you will, kind of manage that, but he's not the beneficiaries of the contract. However, he was a deponent in this case, and what I'm

offering up is excerpts from those depositions, and then also---

THE COURT: Well, I don't think the defendant ought to be able to offer such portions. If you're just gonna hand up a portion of the deposition, the defendant should be also given an opportunity to offer up other portions of the deposition or the entire deposition, which generally probably would be the better course of action.

MR. BABB: Yes, Your Honor, and I have, I have no issue with that. This was not a surprise tactic on them. I, I realized it was not in the initial, the initial memorandum. I just wanted to add it in and supplement it.

THE COURT: All right. That's fine. Just the conditions under which I was stating.

MR. BABB: Yes, Your Honor.

THE COURT: Okay.

MR. BABB: The other one I've handed you -- it does have two different -- the other one's John Love, who is a plaintiff in this case, one of the, one of the lifetime members.

THE COURT: Okay.

MR. BABB: And, Your Honor, in those -- in Mr. Hope's deposition he talks about being with his father when he negotiated the contract. He, he was told that the contract was -- they were, they were gonna ensure the top

priority of all elements of the contract, all elements of Exhibit A. They were being provided the top priority, and this is, this is -- these are the assurances they were given by The Gamecock Club.

In Mr. Love's deposition---

THE COURT: How could they be a top priority on everything?

MR. BABB: Your Honor, if I recall correctly, they asked about Exhibit A, and he said everything listed in Exhibit A. We were assured the top priority, parking --.

THE COURT: Exhibit A says second priority on the away -- on bowl games. Second priority on some---

MR. BABB: Your Honor -- and I believe your question was focused on parking when, when it was asked.

THE COURT: Okay.

MR. BABB: But I mean obviously it says what it says, Your Honor. I don't mean to mischaracterize it.

Also, Mr. Love, in his deposition, talked about the same assurances, and actually Mr. Love's case is a little bit unique in that, in 1986, he had a conversation with The Gamecock Club. That's within that deposition there. He had a conversation with the Gamecock Club about getting a parking spot for $10,000. This was not the lifetime membership. This was before that. I believe it was a full, a full scholarship donor or achieved some high donor

level, and that's what they did. They gave him a good parking spot he wanted.

In 1990, he upgraded that, if you will. He became a lifetime member and was actually moved to, to the apron where he had this assigned reserved parking that was part of his contract we're disputing here today, Your Honor.

It's a little bit unique because Mr. Love actually was made those assurances or promises in 1986 for the good parking, and then in, of course, back in '90, he got the assigned reserved parking with the contract, which is even better parking.

THE COURT: What is your client seeking?

MR. BABB: Sir?

THE COURT: What is your client seeking or clients plural?

MR. BABB: Your Honor, when we began this we were seeking specific performance to -- and really an order to prevent The Gamecock Club from mixing them in the general populace of priority and giving them the priority they should have had as they -- in their position as lifetime members before -- they're getting carved out before the others. In other words, the lifetime members get the first two hundred and however many spots available, but the best spots available, and then the annual members.

How they---

THE COURT: And that's not being done?

MR. BABB: That's not being done, Your Honor, and we assert that just under, just under equity, under equitable principles, now that's -- we're already a year past that, that they should be compensated at least for that year or try to be made whole for it.

THE COURT: Well, your complaint, I think, just asks for -- that is the original complaint. I don't know if it's been amended. Just a pendente permanent injunction.

MR. BABB: There, there was an amended complaint, Your Honor. I don't believe it changed the prayer. I believe that was --.

THE COURT: It doesn't ask for money damages?

MR. BABB: No, Your Honor, it does not.

THE COURT: Okay.

MR. BABB: And this, of course, was filed back in -- originally filed back in June when they first caught wind of what was gonna happen in that Fall, that year. I mean problems with dealing with the football parking.

THE COURT: I imagine there was some lively conversation at the reception on March 26th.

Go ahead.

MR. BABB: Yes, Your Honor, and that -- the -- March 26th was actually was -- well before this, but then that, I believe, it was in 2008. However, it was after

the issue in Rosen came about where they started charging lifetime members for parking. But we've, we've argued under also -- aside from the arguments under ambiguous -- aside from arguing that, that, in the alternative, it's not ambiguous in our favor, it's, at a minimum, ambiguous. Just as the Rosen Court found with that specific term and with the issues in the Rosen case, we, we think that this Court can find that as well.

We would also argue equitable estoppel. Mr. Stepp said there's no evidence that there, you know, that there's any, anything they presented to them that wasn't true or tricked them in any way. But, Your Honor, I've given you, of course, the deposition experts there. I'm giving you the March 5th letter talking about the priority level.

Those were the assurances they were given. That's what they were told, both from, both from the deposition excerpts, which go back to the time of the formation of the contract, and even, in 2008, assured that they were gonna have this top priority, and now they're being told something different. They're being told you're being mixed in with everybody else and that's just that.

So, Your Honor, we do think there's some evidence -- there's evidence to support that, an argument for equitable estoppel, and collateral estoppel focuses around

the presentation, Your Honor, and we'd argue that while there are different issues as to the assigned reserved parking, it's the same exact term and that Court found that there was ambiguity with the assigned reserved parking, and we'd argue here that, under, under the principle of collateral estoppel, that this Court should also find that there is ambiguity.

THE COURT: All right. Mr. Stepp.

MR. STEPP: Thank you, Your Honor.

You know, it's clear, it's clear to me that the plaintiffs continue to confuse the issue. Everything I heard is, is not about a promise that's in this contract. This is what the case is about. Here's the contract. This is what the parties agree to, assigned reserved parking and nothing more. And, and what the plaintiffs are doing is trying to confuse policy with respect of not moving them with a promise not to move them with the practice of not moving them and having the Court find that there was some obligation not to move them, and, and I just think that's not the issue.

We have a written agreement. This is a breach of contract case. Exhibit A is attached to the plaintiff's complaint.

This is what they contend the contract is. It's not what I say the contract is. That's what they say the

contract is. Of course, I agree with them. But this is the basis that they would have to show the Court that they've got these rights. Not something that happened thereafter.

THE COURT: This contract was never amended?

MR. STEPP: No, Your Honor. Correct.

Now, the implication here, from Mr. Babb's argument, is that The University has taken these people and kicked them to the curb and thrown them out in the, in the, as Your Honor so charitably said, with the unwashed masses. That is entirely not the case.

They enjoy excellent parking in a first class parking facility, and I will represent to the Court, many of the lifetime, several lifetime members are in what I guess people think is the best parking, that Premium North and Premium South. There are lifetime members who park there. So, lifetime members have not been treated unfairly. They enjoy excellent parking, and, as I pointed out earlier, they now get two spaces instead of, instead of one.

THE COURT: Well, excellent parking may be an issue or I always inquire as to the, for lack of a better word, the selection process by which these lifetime members or scholarship members are assigned their parking, and whether it, in the plaintiff's words, are diluted by Johnny Come Lately's, and that's my word.

MR. STEPP: Yes, sir.

THE COURT: I don't -- factually, as he said, probably show the Court on a diagram where these people get to park as opposed to other lesser scholarship donors.

MR. STEPP: I could. But with all due respect, that's not the issue.

I mean the issue simply is does this language prohibit us from moving their parking. I mean that's the question. I'll be happy to show you, and make the Court comfortable that, in moving their parking, we didn't treat them badly or unfairly or take them to the bottom of the heap. But that really is not the question before the Court.

The question is are we contractually prohibited from moving their parking spaces, and if we -- it's sort of inconsistent.

THE COURT: Well, I think you're not---

MR. STEPP: Very good.

THE COURT: ---from moving them.

MR. STEPP: All right.

THE COURT: As long as you provide them with assigned reserved parking.

MR. STEPP: Well, they do have assigned reserved parking, and I would, I would call the Court's attention to Ms. Burton's affidavit, one of our Exhibits E's,

Exhibit E-1, and she talks -- she lays out what the selection process was. So, you can see and they have assigned reserved parking. There's really no, no question that they continue to enjoy assigned reserved parking.

Did they get the very highest priority because of their lifetime membership status?

Some of them probably did, but, but as a function of being lifetime members, no, they didn't all get to the top of the heap.

But, you know, here's where they had a right to priority on certain things. Not with respect to parking. And, so, they're trying to impose that into the contract when it simply doesn't provide for that.

So, I would, I would -- so, I'd call the Court's attention to Ms. Burton's affidavit.

On this business about it's ambiguous if you read it our -- unambiguous if you read it our way or ambiguous if you read it their way. There's not one case that's been cited, and I'm not familiar with one, that says the question of ambiguity is a function of the outcome of the case. The plaintiffs have not cited any such authority to the Court, and I respectfully suggest that, that they can't.

Now, I'm going to talk about, you know, the, the letter of -- that Mr. Wirery wrote. Now, you know, it's

curious to me that is -- this is the evidence of a misrepresentation. If it wasn't put before the Court as a part of the plaintiff's memorandum in support of their motions, they didn't cite this at all. They didn't cite any of that deposition testimony that I don't even know what it is. They simply relied on Mr. Lee's affidavit, which patently is insufficient. So, now they're wrestling around for something else to throw up to the Court.

But I would point out with respect to the Wirery letter that it comes in 2008. You know, that's ten years or twenty years after these contracts were assigned. So, it's not a part of the discussions or negotiations that led to the written agreement between the parties, and unless there's evidence of some consideration or other agreement, it neither constitutes a new agreement, no evidence of that, or a modification, neither one.

In fact, they've never pleaded that this letter constituted the contract that has ensued or a modification of the agreements that they attached to their complaints. So, it's, it's not contractual on its, on its face. Moreover, there, there's no evidence of any reliance.

What do the plaintiffs contend that they did after March 5th, 2008, that would somehow convert this generic statement of top, of top of all Gamecock Club priority into some sort of agreement by which The University of

South Carolina is bound by Chris Wirery as executive director of the Gamecock Club.

There's, there's zero evidence to support any such inference. And without that kind of evidence, this letter is of no moment. It is simply a statement of custom or whatever. But it, but it doesn't blossom into a contract, and cannot be used to alter the agreement, the written agreement, between the parties. As I've pointed out, that's why we write them down. So we'll know what they said, and this time we did.

Now, with respect to both the Wirery letter and the deposition excerpts, I don't know what the deposition experts say because I haven't been provided with them. But I would remind Your Honor that we've got a Parole Evidence Rule issue that you're gonna have to deal with, and the Court's not permitted to entertain evidence of prior or contemporaneous agreements or understandings that were not included in the final written expression of the agreement between the parties, and that's regardless of whether the contract is regarded as ambiguous or not ambiguous.

The Parole Evidence Rule simply says you don't get to sign an agreement that says one thing and come in later and say oh, but I was told X, Y, and Z before that even though the agreement doesn't say that. That's exactly

what they're trying to do.

They're exactly trying to say that notwithstanding the fact that both parties, dealing in arm's length, executed a written agreement that specified his terms, that they have understandings that were contrary to, to, to the written agreement or that supplemented the written agreement that weren't included. If that were true, they needed to put them in the written document. And they didn't do it. And because they didn't do it, there's now a serious parole evidence problem about whether they get to come in and talk about it at all. I'll address that when I see, when I see the excerpts, and I'll respond to the Court in some way about that.

But as, as, as I think Your Honor understands, this, this case is about this contract, not any other contract, unmodified, unvarnished, there it is. Unambiguous, assigned reserved parking. There are no omitted necessary terms. There's no evidence of any breach of the obligation to provide assigned reserved parking, and given that the contract is unambiguous, it's up to Your Honor to interpret it and apply it. We think, when you do that, it will be judgment for us.

Thank you.

THE COURT: Mr. Babb, anything further?

MR. BABB: Yes, Your Honor.

You know, we've asserted that even looking at the four corners of that contract, assigned reserved parking doesn't say anything about the priority. Yet, the other portions of the contract talk about priority there. So, at a minimum, there is ambiguity there.

And, so, Mr. Stepp, of course, doesn't think parole evidence, excuse me, the Parole Evidence Rule shouldn't look at extrinsic evidence. But we believe that, at a minimum, if it's not unambiguous in our favor because they certainly -- my client certainly read that as, to mean that they got that parking spot that they were given, assigned reserved parking spot, and it wasn't gonna change.

And, Your Honor, when they got moved, it wasn't like other people were moved to their spot. The, the parking was done away with for, I guess, security purposes or whatever it is. And if they were suppose to be given assigned reserved parking, that, that specific spot each one of them got, and it was all of a sudden not a parking spot anymore, then they should have been given the best equivalent. That's why we argue it's unambiguous in our favor.

But at a minimum, if you want to address the ambiguity issue, it doesn't say anything about the priority of the -- the priority one way or the other.

Yet, other areas address it. If The University's suddenly wanting to put them in with the general mass of priority such as the football tickets that they are, and that's why the football tickets say priority because they're given the first priority on the football tickets, in some case it's second and others, then The University, as the drafters of the contract, should have that in there. But they didn't, Your Honor.

So, that's why we say, at a minimum, there's ambiguity.

THE COURT: All right. All right. Thank you, counsel.

Let me ask that you -- I'm gonna read these. In the meantime, I'll need proposed orders.

Tell me how much time you need.

MR. STEPP: Ten days, Your Honor?

THE COURT: Let's pick a day.

What is that?

MR. STEPP: Monday the 19th.

THE COURT: Mr. Babb?

MR. BABB: Your Honor, that's fine, and I'll go ahead and send counsel those excerpts as well.

THE COURT: Yeah.

Postmarked no later than Monday the 19th.

How about that?

MR. BABB: That's fine, Your Honor.

MR. STEPP: That's right.

Would you prefer also to get them by e-mail, Your Honor?

THE COURT: Yes, sir, so that I can edit it.

MR. STEPP: Well, I'm assuming, on the 19th, Judge, he'll get the excerpts to me.

MR. BABB: I'll get them to you.

MR. STEPP: Great.

THE COURT: All right. Let's get it---

MR. STEPP: Thank you, Your Honor.

THE COURT: ---before we go to the game.

MR. BABB: Thank you, Your Honor.

* * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury Sessions for Richland County, South Carolina, on the 9th day of August, 2013, as reported by Karen Ambroziak and transcribed by myself to the best of my ability.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

October 30th, 2013

Pamela E. Green

PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	IN THE FIFTH JUDICIAL CIRCUIT
Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner and John Love	)	Civil Action No. 2012-CP-40-3924
Plaintiffs,	)	
vs.	)	
The University of South Carolina and The University of South Carolina Gamecock Club,	)	
Defendants.	)	

MEMORANDUM IN SUPPORT OF THE PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

The plaintiffs[1], J. Perry Kimball, George M. Lee, III, Mena H. Gardiner and John Love, do hereby submit their Memorandum in Support of Plaintiffs' Motion for Summary Judgment and in Opposition to Defendants' Motion for Summary Judgment. This Court should grant summary judgment against the defendants, The University of South Carolina ("University") and The University of South Carolina Gamecock Club ("Gamecock Club"), as to the plaintiffs' cause of action for Breach of Contract and deny summary judgment against the Plaintiffs on the following grounds.

STATEMENT OF THE FACTS[2]

[1] Linda Rodarte was previously dismissed by way of a stipulation of dismissal and is no longer a party in this action.

[2] Plaintiffs respectfully reserve the right and request the Court allow the Plaintiffs to supplement this memorandum with additional documents and depositions transcript excerpts prior to and during the hearing schedule on the pending motions for summary judgment.

The plaintiffs each entered into separate valid contractual agreements with the defendants guaranteeing each respective plaintiff "Assigned Reserved Parking" for University football games along with other benefits. (*See* the contracts attached hereto as Exhibits A through D). Plaintiffs and/or their predecessors in interest each made payments to the Gamecock Club in exchange for their Lifetime Scholarship/Silver Spur Memberships in the Gamecock Club and for the right to pass the memberships to a beneficiary.[3] *Id.* For purposes of this case, the Plaintiffs are considered "lifetime members" and the contracts are considered "lifetime contracts". Each contract included an attached "Exhibit A", which stated among other benefits, each Lifetime Full Scholarship member and Lifetime Scholarship (Silver Spur) member would receive "assigned reserved parking." (*See* "Exhibit A" to the contracts attached hereto as Exhibits A through D).

Plaintiffs' contracts were honored, collectively for decades, until the summer of 2012. (Affidavit of George Lee ¶ 5, attached hereto as Exhibit E). Pursuant to their contracts, plaintiffs were given priority in parking assignments ahead of non-lifetime donors. (Exhibit E- Affidavit of George Lee ¶¶ 5-6). However, through the recent actions taken by the defendants, the plaintiffs' priority in parking was rescinded by the defendants and numerous non-lifetime donors have been given priority ahead of each plaintiff. (*Id.* ¶¶ 6-7).

The aforementioned actions of the defendants amounted to a breach of the plaintiffs' respective contracts.

STANDARD OF REVIEW

Summary judgment is appropriate where the pleadings and evidence "together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving

[3] As part of the Lifetime Contracts, each Lifetime Member provided either a life insurance policy of typically $100,000.00 with the University as the beneficiary or a sum of money or property as consideration.

party is entitled to judgment as a matter of law." *Englert, Inc. v. LeafGaurd USA, Inc.*, 377 S.C. 129, 134, 659 S.E. 2d 496, 498 (S.C. 2008) (quoting Rule 56(c), SCRCP).

ARGUMENT

I. THE COURT SHOULD GRANT PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

A. Valid Contracts Exist Between the Plaintiffs and the Defendants

The plaintiffs' contracts with the defendants are valid under South Carolina law. "In South Carolina, the formation of a contract is governed by well settled principles." *Carolina Amusement Co. v. Conn. Nat'l Life Ins. Co.*, 313 S.C. 215, 220, 437 S.E.2d 122, 125-126 (S.C. Ct. App. 1993). "[A] contract exists where there is an agreement between two or more persons upon sufficient consideration of either to do or not to do a particular act." *Id.* (quoting *Benya v. Gamble*, 282 S.C. 624, 628, 321 S.E.2d 57, 50 (S.C. Ct. App. 1984)). Therefore, "there must be an offer and an acceptance accompanied by valuable consideration." *Id.* A valid offer "is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." *Id.* (quoting Rest. 2d of Contracts § 24 (1981). Such an offer "identifies the bargained for exchange and creates a power of acceptance in the offeree." *Id.* The plaintiffs' contracts with the defendant are valid and their rights under the contracts were given to them in exchange for valuable consideration. The defendants do not dispute that valid contracts exist; however, the argument stems from the interpretation of "assigned reserved parking" set forth in "Exhibit A" to each contract.

B. The Defendants Breached the Contracts

The plaintiffs' contractual rights include "assigned reserved parking" as set forth in "Exhibit A" to each lifetime contract. By undermining the plaintiffs' priority in parking the

defendants have breached their contracts with the plaintiffs. (*See, generally,* Exhibit E - Affidavit of George Lee). The plaintiffs assert that the contracts are unambiguous to the extent they provide plaintiff with the specific assigned reserved parking they received under the contract, which was the best available immediately on the "apron" of the stadium. If the University cannot provide the same specific parking places, then they should provide the Plaintiffs with the best available alternative ahead of the non-lifetime members.

Alternatively, plaintiffs argue that if the contracts are not unambiguous in their favor then there is, at a minimum, an ambiguity as to the term "assigned reserved parking." Any ambiguity in the statement "assigned reserved parking" should be construed against the defendant drafters of the contracts. *Myrtle Beach Lumber Co. v. Willoughby*, 274 S.E.2d 423, 426 (S.C. 1981) (stating that, "an ambiguity in a written contract should be construed most strongly against the drafters").

Furthermore, the defendants' course of dealing with the plaintiffs sheds light on the partics' intent as to the term "assigned reserved parking". Course of dealing evidence, here, is admissible parol evidence to overcome any deficiency in the language of the contracts between the plaintiffs and defendants. *See, Penton v. J.F. Cleckley & Co.*, 326 S.C. 275, 281, 486 S.E.2d 742, 745 (S.C. 1997); *Lindsay v. Lindsay*, 328 S.C. 329, 343, 491 S.E.2d 742, 745 (1997); *Ebert v. Ebert*, 320 S.C. 331, 339, 465 S.E.2d 121, 126 (S.C. Ct. App. 1995); and *U.S. Leasing Corp. v. Janicare, Inc.*, 294 S.C. 312, 318, 364 S.E.2d 2023, 205 (S.C. Ct. App. 1988). While silence alone does not create an ambiguity, "our supreme court and this court have also recognized when an agreement is silent as to a particular matter and because of the nature and character of the transaction an ambiguity arises, parol evidence may be admitted in order to supply a deficiency in the language of the contract." *Harvey J. Rosen, Joseph B. Rosen and Rebecca Nurick v. The*

University of South Carolina and The University of South Carolina Gamecock Club, Op. No. 2011-UP-331 (S.C.CT.APP. filed June 27, 2011)(unpublished and attached hereto as Exhibit F). The course of dealing pursuant to these contracts over the past few decades clearly demonstrates that what was meant by "assigned reserved parking" was the priority in parking selection that the plaintiff's enjoyed every football season until present. (*See* Exhibit E - Affidavit of George Lee). Until the University moved all parking from around the stadium, the plaintiffs actually parked on the "apron" of parking immediately surrounding the stadium which is the best available parking and considered the highest priority. The plaintiffs essentially maintained the exact same parking spots for years and years and were never forced to compete in priority with non-lifetime members until 2012. By injecting lifetime members into the parking priority pool with all of the other non-lifetime members, the lifetime members have lost their contractual priority. Even worse, the lifetime members will now be forced to compete with the non-lifetime members by providing additional funds to gain better priorty—which is the EXACT issue plaintiffs sought to avoid by securing their parking through the lifetime contract. Reducing the plaintiffs' priority amounts to a breach of the contracts.

C. The Defendants are Equitably Estopped

"Courts have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible." *Ex Parte Dible*, 279 S.C. 592, 595-96, 310 S.E.2d 440, 442 (S.C. Ct. App. 1983). Assuming *arguendo* that there was no valid contract or a clear breach of the same, the defendants are equitably estopped, by their conduct, from disclaiming liability for their actions. Where a party exercises "(1) conduct which amounts to a false representation, or conduct calculated to convey the impression that the facts are otherwise, (2) the intention that such conduct shall be acted upon by the other party, and (3) knowledge of

the facts" they may be estopped from arguing in contravention of their actions, intention and knowledge. *Provident Life & Accident Ins. Co. v. Driver*, 317 S.C. 471, 477, 451 S.E.2d 924, 928 (S.C. Ct. App. 1994). To assert equitable estoppel that party must show "(1) a lack of knowledge or the means of knowledge of truth as to facts in question, (2) justifiable reliance upon the conduct of the party estopped; and (3) prejudicial change in the position of the party claiming estoppel. *Walton v. Walton*, 282 S.C. 165, 168, 318 S.E.2d 14, 16 (1984).

Here the defendants, in contracting with the plaintiffs and through years of conduct in accordance with such contracts, conveyed to the plaintiffs that they were entitled to higher priority in parking than non-lifetime donors. (Exhibit E - Affidavit of George Lee). The plaintiffs reasonably relied on the defendants' actions and changed their positions accordingly by becoming lifetime donors. *Id.* After years of relying on the defendants' assurances, contractual and otherwise, the plaintiffs have been harmed by the defendants' sudden unilateral change in policy. *Id.* The defendants had knowledge of the plaintiffs' reliance on the defendants' actions and the plaintiffs' understanding of the contractual arrangement; therefore, the defendants should be estopped from claiming otherwise.

D. The Defendants are Collaterally Estopped

The defendants defended previous litigation concerning identical contracts to the contracts at issue here. *See Rosen* (Exhibit F). There, the Court of Appeals held that the lifetime donor contracts were ambiguous as to the term "assigned and reserved" and that the defendants' course of dealing was admissible parol evidence to shed light on the intention of that term. *Id.* Therefore, to the extent the defendants assert a position contrary to the Court of Appeals holding in that case they are collaterally estopped from doing so. *See Aaron v. Mahl*, 381 S.C. 585, 592, 674 S.E.2d 482, 486 (S.C. 2009) ("Collateral estoppel prevents a party from re-litigating an issue

in a subsequent suit which was actually and necessarily litigated and determined in a prior action.").

Contrary to the position taken by Defendants in their memorandum, the *Rosen* case directly involved the meaning of the term "assigned reserved parking" in "Exhibit A" to a lifetime contract just as in these cases. The only difference being that *Rosen* centered around the University introducing an annual fee (circa 2007) for lifetime members parking instead of the present issue of forcing lifetime members to fight for priority with non-lifetime members (circa 2012). Yet we are disputing the same exact language in the contracts and the same issues as to ambiguity of that language.

II. THE COURT SHOULD DENY THE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Plaintiffs respectfully request that the Court deny the Defendants' Motion for Summary Judgment. In support, Plaintiffs incorporate the arguments and factual allegations set forth in the previous arguments above, the pleadings and documents in this case. At a minimum, the "assigned reserved parking" term is ambiguous. According, parol evidence may be introduced to explain the ambiguity, and such evidence shows that assigned reserved parking was the best available parking around the "apron" of the stadium and should have been given the same or similar parking. Defendants are also equitably and collaterally estopped. For these reasons, the Defendants' motion for summary judgment should be denied.

CONCLUSION

For the above reasons, the plaintiff respectfully request that the Plaintiffs' Motion for Summary Judgment as to the Defendants' liability for breach of contract should be granted and the Plaintiffs are entitled to the relief that they have requested. The plaintiffs further request that the Court deny the Defendants' Motion for Summary Judgment.

Respectfully Submitted,

J. LEWIS CROMER & ASSOCIATES, LLC

BY: _____

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Attorneys for Plaintiff

August 7, 2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	IN THE FIFTH JUDICIAL CIRCUIT
	)	
Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner and John Love	)	Civil Action No. 2012-CP-40-3924
	)	**CERTIFICATE OF SERVICE**
Plaintiffs,	)	
	)	
vs.	)	
	)	
The University of South Carolina and The University of South Carolina Gamecock Club,	)	
	)	
Defendants.	)	
	)	

This is to certify that the undersigned employee of J. Lewis Cromer & Associates, LLC, did cause to have served on August 7, 2013, a copy of the Plaintiff's Memorandum in Support of the Plaintiffs' Motion for Summary Judgment and in Opposition to Defendants' Motion for Summary Judgment, via email & First Class Mail, postage prepaid, to the following counsel of record at the addresses indicated:

Bess DuRant, Esquire
Sowell Gray
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The Honorable Thomas W. Cooper, Jr. (via email only)
gcooperlc@sccourts.org

Monica Mulvey Mcgee, paralegal

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT made this 16th day of March, 1990, by and between JOHN H. LOVE hereinafter referred to as the "Donor" and the University of South Carolina Gamecock Club, hereinafter referred to as the "Gamecock Club".

WITNESSETH:

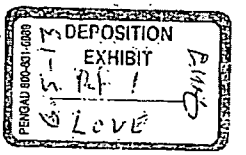
FOR AND IN CONSIDERATION of the mutual covenants contained herein, the parties do hereby agree as follows:

1. Donor hereby agrees to irrevocably assign and contribute to the Gamecock Club the face amount of a whole life insurance policy valued at a minimum $100,000 with an A+ top 25 company as rated by the "Best Rating System".

2. It is understood and agreed that the University will be the irrevocable owner and sole beneficiary of the policy and that the policy will be the property of the Gamecock Club. The Donor will not retain any benefits under the policy.

3. Donor agrees to pay the annual premium payments of a sum not less than $1,000 on the above described policy to the Gamecock Club for a period of eight (8) years until the policy is paid up at which time the Gamecock Club will own the paid up policy. At this time, the cash value of the policy will continue to pay the premiums throughout the life of the Donor. The Donor shall provide a copy of the policy to the club and will be responsible for any further premiums that might come due on the policy. The Gamecock Club reserves the right to make payments on the policy should the Donor refuse to do so.

EXHIBIT A



DEFS - 000067

000090

4. The University of South Carolina Gamecock Club does hereby acknowledge receipt of said insurance policy and agrees that in exchange for this gift and the agreement by Donor to make all premium payments, Donor will be designated as a Lifetime Scholarship Donor for the eight (8) years he/she is paying on the policy with all the privileges and benefits pertaining thereto as set forth in the attached Exhibit A attached hereto and made a part hereof and the terms of which are incorporated herein by reference. In accordance with said attachment, JOHN H. LOVE will have the opportunity to purchase tickets entitled to the Gamecock Level or membership presently held. There will be no guarantee as to where ticket assignments will be located. Assignments will be made according to membership priority and in accordance with the Gamecock Club By-laws.

5. Upon completion of the eight (8) years, Donor will have an option:

a. Make no further contributions to the Gamecock Club and receive Full Scholarship benefits for the remainder of his/her lifetime. The Donor will revert back to the Full Scholarship inheritance policy of spouse only at this time.

b. Make an annual contribution of $500.00 or more to the Gamecock Club and continue to receive the Lifetime Full Scholarship membership in the Gamecock Club which includes an inheritance of any named heir.

6. In the event the Donor defaults on the payment of the insurance premium to the Gamecock Club, all benefits of the membership including priority in the Gamecock Club to Donor shall be cancelled. In such event, the Gamecock Club shall have the right to cancel the policy or continue to make the premium payments. The Gamecock Club may

EXHIBIT A

DEFS - 000068

000091

also collect and recoup from the Donor the difference between the value of the gift received and of the contribution actually paid.

7. The privileges of this membership will be transferred to SUSAN B. LOVE of BURLINGTON N.C. (Address) upon death of the Donor as long as the Donor remains a Gamecock Club member at the Lifetime Scholarship level. Upon death of the Donor, the family has 90 days to notify the Club and provide a copy of the death certificate. Should the heir of this membership predecease the Donor, the heir of this membership may be re-named.

8. Upon the death of the Donor the proceeds from the insurance policy will be deposited in a Gamecock Club permanent endowment account.

IN WITNESS WHEREOF, John H. Love has caused these presents to be duly authorized, and the University of South Carolina Gamecock Club has hereunto set its hand and seal on the date first above written.

DONOR

By: _____ (L.S.)

Date: 3-16-90

THE UNIVERSITY OF SOUTH CAROLINA

By: _____ (L.S.)
Mr. Thomas L. Stepp
Sceretary/Board of Trustees

Date: 4/12/91

By: _____ (L.S.)
A. King Dixon, II
Director of Athletics

Date: 7-9-90

THE UNIVERSITY OF SOUTH CAROLINA
GAMECOCK CLUB

By: _____ (L.S.)
Art Baker
Executive Director/Gamecock Club

Date: 6/29/90

EXHIBIT A

DEFS - 000069

000092

0095

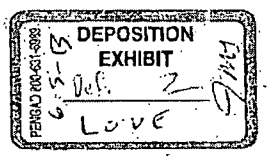
EXHIBIT A

LIFETIME FULL SCHOLARSHIP

$25,000 - $40,000 (may be pro-rated over a 5 yr. period)

--Four Season Football Tickets (Best Available)
--Additional Four Season Football Tickets (Total of 8)
--Assigned Reserved Parking
--Second Priority on Away and Bowl Game Tickets
--Tickets May Be Assigned to One Designated Heir
--Four Season Basketball Tickets (Best Available)
--Assigned Parking at Coliseum (If Available)
--Second Priority on Away and Tournament Game Tickets
--Second Priority on Any Tickets Involving Any Other South Carolina Athletic Events

EXHIBIT A



DEFS - 000469

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT made this 8th day of MAY, 1986, by and between STUART C HOPE, hereinafter referred to as the "Donor" and the University of South Carolina Gamecock Club, hereinafter referred to as the "Gamecock Club,"

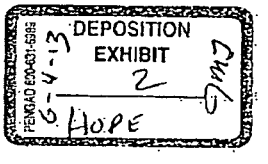
WITNESSETH:

1. Stuart C. Hope has contributed Five Thousand and No/100 Dollars ($5,000) to the University of South Carolina Gamecock Club.

2. Stuart C. Hope has agreed to contribute the additional sum of Twenty Thousand and No/100 Dollars ($20,000) payable in annual installments of Five Thousand and No/100 Dollars ($5,000) beginning in 1987 and ending in 1990 for the privilege of being a Lifetime Scholarship Member of the Gamecock Club with all the benefits appertaining thereto.

3. The University of South Carolina Gamecock Club hereby acknowledges receipt of Five Thousand and No/100 Dollars ($5,000) and agrees that in exchange for the receipt of Five Thousand and No/100 Dollars ($5,000) and the pledge of the additional Twenty Thousand and No/100 Dollars ($20,000) Stuart C. Hope will be designated as a Lifetime Scholarship Donor with all the privileges and benefits pertaining thereto as set forth in the attached Exhibit A attached hereto and made a part hereof and the terms of which are incorporated herein by reference. In accordance with said attachment, Stuart C. Hope will have the opportunity to purchase EIGHT (8) football tickets and four (4) basketball tickets. It is understood and agreed that in the event of death of the beneficiary during the lifetime of the Donor, Donor may change the beneficiary by written amended agreement with the University.

EXHIBIT B



JLC&A00001

000094

0097

4. The Gamecock Club agrees that the privileges and benefits of this membership will be transferred to MEMA HOPE GARDNER (name), COLUMBIA, SC (address), upon the death of Stuart C. Hope.

5. All funds contributed by Stuart C. Hope under the terms of this agreement shall be deposited in a University permanent endowment account of which only the income derived therefrom may be spent as determined by the USC Gamecock Club.

IN WITNESS WHEREOF Stuart C. Hope has caused these presents to be duly authorized, and the University of South Carolina Gamecock Club has hereunto set its hand and seal on the date first above written.

DONOR

By: _____ (L.S.)
Stuart C. Hope

Date: _____

THE UNIVERSITY OF SOUTH CAROLINA

By: _____ (L.S.)
J. Steven Beckham
Chief Executive Assistant
to the President

Date: 5/28/86

THE UNIVERSITY OF SOUTH CAROLINA
GAMECOCK CLUB

By: _____ (L.S.)
Chip Cleary
Director, Gamecock Club

Date: 4-25-86

EXHIBIT B

JLC&A00002

EXHIBIT A

LIFETIME SCHOLARSHIP

$25,000-$40,000 (may be pro-rated over a 5 year period)

--Four Season Football Tickets (Best Available).
--Additional Four Season Football Tickets (Total of 8).
--Assigned Reserved Parking.
--Second Priority on Away and Bowl Game Tickets.
--Tickets May Be Assigned to One Designated Heir.
--Four Season Basketball Tickets (Best Available).
--Assigned Reserved Parking at Coliseum (If Available).
--Second Priority on Away and Tournament Game Tickets.
--Second Priority on Any Tickets Involving Any Other South Carolina Athletic Events.

EXHIBIT B

JLC&A00003

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT made this 21st day of March, 1996, by and between George D. Cassell hereinafter referred to as the "Donor" and the University of South Carolina Gamecock Club, hereinafter referred to as the "Gamecock Club".

WITNESSETH:

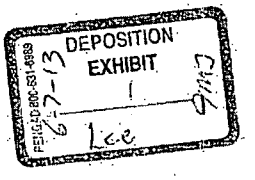
FOR AND IN CONSIDERATION of the mutual covenants contained herein, the parties do hereby agree as follows:

1. Donor hereby agrees to irrevocably assign and contribute to the Gamecock Club the face amount of a whole life insurance policy valued at a minimum $100,000 with an A+ top 25 company as rated by the "Best Rating System".

2. It is understood and agreed that the University will be the irrevocable owner and sole beneficiary of the policy and that the policy will be the property of the Gamecock Club. The Donor will not retain any benefits under the policy.

3. Donor agrees to pay the annual premium payments of a sum not less than $1,000 on the above described policy to the Gamecock Club for a period of eight (8) years until the policy is paid up at which time the Gamecock Club will own the paid up policy. At this time, the cash value of the policy will continue to pay the premiums throughout the life of the Donor. The Donor shall provide a copy of the policy to the club and will be responsible for any further premiums that might come due on the policy. The Gamecock Club reserves the right to make payments on the policy should the Donor refuse to do so.

EXHIBIT C



8042-A-005
JLC&A00004

4. The University of South Carolina Gamecock Club does hereby acknowledge receipt of said insurance policy and agrees that in exchange for this gift and the agreement by Donor to make all premium payments, Donor will be designated as a Lifetime Scholarship Donor for the eight (8) years he/she is paying on the policy with all the privileges and benefits pertaining thereto as set forth in the attached Exhibit A attached hereto and made a part hereof and the terms of which are incorporated herein by reference. In accordance with said attachment, [redacted] will have the opportunity to purchase tickets entitled to the Gamecock Level or membership presently held. There will be no guarantee as to where ticket assignments will be located. Assignments will be made according to membership priority and in accordance with the Gamecock Club By-laws.

5. Upon completion of the eight (8) years, Donor will have an option:

a. Make no further contributions to the Gamecock Club and receive Full Scholarship benefits for the remainder of his/her lifetime. The Donor will revert back to the Full Scholarship inheritance policy of spouse only at this time.

b. Make an annual contribution of $500.00 or more to the Gamecock Club and continue to receive the Lifetime Full Scholarship membership in the Gamecock Club which includes an inheritance of any named heir.

6. In the event the Donor defaults on the payment of the insurance premium to the Gamecock Club, all benefits of the membership including priority in the Gamecock Club to Donor shall be cancelled. In such event, the Gamecock Club shall have the right to cancel the policy or continue to make the premium payments. The Gamecock Club may

EXHIBIT C

also collect and recoup from the Donor the difference between the value of the gift received and of the contribution actually paid.

7. The privileges of this membership will be transferred to [illegible] of [illegible] (Address)

upon death of the Donor as long as the Donor remains a Gamecock Club member at the Lifetime Scholarship level. Upon death of the Donor, the family has 90 days to notify the Club and provide a copy of the death certificate. Should the heir of this membership predecease the Donor, the heir of this membership may be re-named.

8. Upon the death of the Donor the proceeds from the insurance policy will be deposited in a Gamecock Club permanent endowment account.

IN WITNESS WHEREOF, [illegible] has caused these presents to be duly authorized, and the University of South Carolina Gamecock Club has hereunto set its hand and seal on the date first above written.

DONOR

By: [signature] (L.S.)

Date: 3-9-90

THE UNIVERSITY OF SOUTH CAROLINA

By: [signature] (L.S.)
Mr. Thomas L. Stepp
Secretary/Board of Trustees

Date: 4/12/91

By: [signature] (L.S.)
A. King Dixon, II
Director of Athletics

Date: 3-9-90

THE UNIVERSITY OF SOUTH CAROLINA GAMECOCK CLUB

By: [signature] (L.S.)
Art Baker
Executive Director/Gamecock Club

Date: 6/27/90

EXHIBIT C

8042-A-007

000099

EXHIBIT A

LIFETIME FULL SCHOLARSHIP

--Four Season Football Tickets (Best Available)
--Additional Four Season Football Tickets (Total of 8)
--Assigned Reserved Parking
--Second Priority on Away and Bowl Game Tickets
--Tickets May Be Assigned to One Designated Heir
--Four Season Basketball Tickets (Best Available)
--Assigned Parking at Coliseum (If Available)
--Second Priority on Away and Tournament Game Tickets
--Second Priority on any Tickets Involving any other South Carolina Athletic Events

EXHIBIT C

8042-B-008

USCA00007

000100

0103

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT made this 23 day of March, 1990, by and between J. Perry Kimbell hereinafter referred to as the "Donor" and the University of South Carolina Gamecock Club, hereinafter referred to as the "Gamecock Club".

WITNESSETH:

FOR AND IN CONSIDERATION of the mutual covenants contained herein, the parties do hereby agree as follows:

1. Donor hereby agrees to irrevocably assign and contribute to the Gamecock Club the face amount of a whole life insurance policy valued at a minimum $100,000 with an A+ top 25 company as rated by the "Best Rating System".

2. It is understood and agreed that the University will be the irrevocable owner and sole beneficiary of the policy and that the policy will be the property of the Gamecock Club. The Donor will not retain any benefits under the policy.

3. Donor agrees to pay the annual premium payments of a sum not less than $1,000 on the above described policy to the Gamecock Club for a period of eight (8) years until the policy is paid up at which time the Gamecock Club will own the paid up policy. At this time, the cash value of the policy will continue to pay the premiums throughout the life of the Donor. The Donor shall provide a copy of the policy to the club and will be responsible for any further premiums that might come due on the policy. The Gamecock Club reserves the right to make payments on the policy should the Donor refuse to do so.

EXHIBIT D

4. The University of South Carolina Gamecock Club does hereby acknowledge receipt of said insurance policy and agrees that in exchange for this gift and the agreement by Donor to make all premium payments, Donor will be designated as a Lifetime Scholarship Donor for the eight (8) years he/she is paying on the policy with all the privileges and benefits pertaining thereto as set forth in the attached Exhibit A attached hereto and made a part hereof and the terms of which are incorporated herein by reference. In accordance with said attachment, J. Perry Kimbrell will have the opportunity to purchase tickets entitled to the Gamecock Level or membership presently held. There will be no guarantee as to where ticket assignments will be located. Assignments will be made according to membership priority and in accordance with the Gamecock Club By-laws.

5. Upon completion of the eight (8) years, Donor will have an option:

a. Make no further contributions to the Gamecock Club and receive Full Scholarship benefits for the remainder of his/her lifetime. The Donor will revert back to the Full Scholarship inheritance policy of spouse only at this time.

b. Make an annual contribution of $500.00 or more to the Gamecock Club and continue to receive the Lifetime Full Scholarship membership in the Gamecock Club which includes an inheritance of any named heir.

6. In the event the Donor defaults on the payment of the insurance premium to the Gamecock Club, all benefits of the membership including priority in the Gamecock Club to Donor shall be cancelled. In such event, the Gamecock Club shall have the right to cancel the policy or continue to make the premium payments. The Gamecock Club may

also collect and recoup from the Donor the difference between the value of the gift received and of the contribution actually paid.

7. The privileges of this membership will be transferred to Teri Lee Kimball of 158 Seclusion Ct. Lexington, S.C. 29072 (Address) upon death of the Donor as long as the Donor remains a Gamecock Club member at the Lifetime Scholarship level. Upon death of the Donor, the family has 90 days to notify the Club and provide a copy of the death certificate. Should the heir of this membership predecease the Donor, the heir of this membership may be re-named.

8. Upon the death of the Donor the proceeds from the insurance policy will be deposited in a Gamecock Club permanent endowment account.

IN WITNESS WHEREOF, J. Percy Kimball has caused these presents to be duly authorized, and the University of South Carolina Gamecock Club has hereunto set its hand and seal on the date first above written.

DONOR

By: J. Percy Kimball (L.S.)

Date: March 23, 1990

THE UNIVERSITY OF SOUTH CAROLINA

By: Thomas L. Stepp (L.S.)
Mr. Thomas L. Stepp
Secretary/Board of Trustees

Date: 4/17/91

By: A. King Dixon, II (L.S.)
A. King Dixon, II
Director of Athletics

Date: 7-9-90

THE UNIVERSITY OF SOUTH CAROLINA GAMECOCK CLUB

By: Art Baker (L.S.)
Art Baker
Executive Director/Gamecock Club

Date: 6/29/90

EXHIBIT D

000103

EXHIBIT A

LIFETIME FULL SCHOLARSHIP

--Four Season Football Tickets (Best Available)
--Additional Four Season Football Tickets (Total of 8)
--Assigned Reserved Parking
--Second Priority on Away and Bowl Game Tickets
--Tickets May Be Assigned to One Designated Heir
--Four Season Basketball Tickets (Best Available)
--Assigned Parking at Coliseum (If Available)
--Second Priority on Away and Tournament Game Tickets
--Second Priority on any Tickets Involving any other South Carolina Athletic Events

EXHIBIT D

EXHIBIT E

SWORN AFFIDAVIT

OF GEORGE M. LEE, III

EXHIBIT E

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND)	IN THE FIFTH JUDICIAL CIRCUIT
Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner and John Love)	Civil Action No. 2012-CP040-3924
Plaintiffs,)	
vs.)	**SWORN AFFIDAVIT OF GEORGE LEE**
The University of South Carolina and The University of South Carolina Gamecock Club,)	
Defendants.)	

RICHLAND COUNTY
FILED
2012 AUG 29 PM 4:40
JEANETTE W. McBRIDE
C.C.P. & G.S.

I HEREBY SWEAR AND AFFIRM UNDER PENALTY OF PERJURY THAT THE FOLLOWING IS TRUE AND CORRECT TO THE BEST OF MY RECOLLECTION:

1. I, George M. Lee, III, am a competent adult and can testify truthfully.
2. I hereby testify of my own knowledge.
3. On May 9, 1990, I entered into a contract with the defendants whereby I was guaranteed assigned and reserved parking in consideration for becoming a lifetime full scholarship member in the University of South Carolina Gamecock Club ("Gamecock Club").
4. As valued consideration for the same, I contributed $100,000 life insurance policy to the Gamecock Club and made all required payments as per the contract.
5. Since entering the contract, I was given priority parking (spot number 314) and had use of such priority up until the summer of 2012, as guaranteed by my contract with the Gamecock Club.
6. Through the Gamecock Club's actions persons have been given priority ahead of mine and in contravention of my contract rights.

7. I feel such actions on the part of the University of South Carolina through the University's Gamecock Club violate my rights under the contract and disregards the Gamecock Club's past course of dealing, over decades, regarding the assignment of reserved parking.

George M. Lee, III

SWORN to before me this
29th day of Auguest 2017

Notary Public for South Carolina
My Commission Expires September 9, 2021

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

EXHIBIT F

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Harvey J. Rosen, Joseph B. Rosen and Rebecca Nurick,
Appellants,

v.

The University of South Carolina and The University of South Carolina Gamecock Club, Respondents.

Appeal From Richland County
Joseph M. Strickland, Circuit Court Judge

Unpublished Opinion No. 2011-UP-331
Heard February 9, 2011 – Filed June 27, 2011

REVERSED AND REMANDED

J. Lewis Cromer and Julius W. Babb, IV, of Columbia, for Appellants.

William H. Davidson, II, and Andrew F. Lindemann, of Columbia, for Respondents.

HUFF, J.: Harvey J. Rosen, Joseph B. Rosen, and Rebecca Nurick (collectively, Rosens) appeal the trial court's order granting summary judgment to the University of South Carolina and the University of South Carolina Gamecock Club (collectively, the University) on the Rosens' claims for breach of contract and constitutional taking. We reverse and remand.

FACTS/PROCEDURAL HISTORY

The Rosens donated approximately $140,000 in money and property to the University and, in exchange, became Lifetime Silver Spur Scholarship members in the Gamecock Club. In 1987, the parties executed contracts memorializing the terms of the agreement. Exhibit A to the contracts listed the benefits and priorities the Rosens received. The exhibit provided:

LIFETIME FULL SCHOLARSHIP

--Four Season Football Tickets (Best Available)

--Additional Four Season Football Tickets (Total of 8)

--Assigned Reserved Parking

--Second Priority on Away and Bowl Game Tickets

--Tickets May Be Assigned to One Designated Heir

--Four Season Basketball Tickets (Best Available)

--Assigned Parking at the Coliseum (If Available)

--Second Priority on Away and Tournament Game

Tickets

--Second Priority on any Tickets Involving any other South Carolina Athletic Events

n the contracts, each of the Rosens designated a beneficiary to receive the lifetime membership upon the Rosens' deaths. This designation provided: "Upon the death of [], this Lifetime Silver Spur membership will ɔe transferred to [] for his lifetime only."

n 2007, the University initiated a fee for the assigned reserved parking at the football stadium for the Gamecock Club donors. Until that time, the Rosens had not paid for parking. However, they had paid for the ıthletic event tickets.

The Rosens brought this action against the University originally asserting causes of action for breach of ɔontract, conversion, and violation of the South Carolina Unfair Trade Practices Act (UTPA)**[1]**. They ımended their complaint to add a claim for a constitutional taking. The University denied their claims. Both ɜides moved for summary judgment.

The trial court found all of the issues were subsumed in the breach of contract issue.**[2]** It held the contracts ɔetween the University and the Rosens were not ambiguous and contained no language that the privileges vere "free" or signified any value was assigned to the privileges. It noted the Rosens had paid for the football ickets over the years, including the increases in the price of the tickets. It found that lifetime donors, such as he Rosens, only received the benefit of maintaining their donor level in the Gamecock Club, regardless of ıny increase in dues, without ever having to contribute yearly dues in the future. The trial court granted the Jniversity's motion for summary judgment. The Rosens filed a motion to alter or amend, which the trial court ɗenied. This appeal followed.

STANDARD OF REVIEW

This court reviews the grant of a motion for summary judgment applying the same standard that governs the rial court. Wogan v. Kunze, 379 S.C. 581, 585, 666 S.E.2d 901, 903 (2008). Summary judgment is proper vhere no genuine issue exists as to any material fact and the moving party is entitled to judgment as a matter ɔf law. Id.; Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the evidence and all ɛasonable inferences that can be drawn from the evidence must be viewed in the light most favorable to the ıon-moving party. Law v. S.C. Dep't of Corr., 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006). "Even when here is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from hem, summary judgment should be denied." Wilson v. Style Crest Prods., Inc., 367 S.C. 653, 656, 627 S.E.2d 733, 735 (2006). "[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

LAW/ANALYSIS

The Rosens argue the trial court erred in finding the language of the contracts to be unambiguous.

"It is a question of law for the court whether the language of a contract is ambiguous." S.C. Dep't of Natural Res. v. Town of McClellanville, 345 S.C. 617, 623, 550 S.E.2d 299, 302-03 (2001). "Whether a contract is

ambiguous is to be determined from the entire contract and not from isolated portions of the contract." Farr v. Duke Power Co., 265 S.C. 356, 362, 218 S.E.2d 431, 433 (1975).

> A contract is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages, and terminology as generally understood in the particular trade or business.

Hawkins v. Greenwood Dev. Corp., 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct. App. 1997) (quoting 17A Am.Jur.2d Contracts § 338, at 345 (1991)). Construction of an ambiguous contract is a question of fact. Skull Creek Club Ltd. P'ship v. Cook & Book, Inc., 313 S.C. 283, 286, 437 S.E.2d 163, 165 (Ct. App. 1993).

At oral argument, the University urged this court to consider that the Rosens paid for football tickets, including the increases in football ticket prices, as the "customs, practices, [and] usages" of the Gamecock Club. In considering the payment of ticket prices, we must also consider that during the same time period, the Rosens were not required to pay for the parking spaces. Exhibit A made no distinction in the language used describing the tickets and parking spaces. It neither stated additional charges would apply or that the benefits would be free. When considering "the customs, practices, [and] usages" of the Gamecock Club that despite similar language, the members paid for tickets but did not pay for parking, we find the contracts to be ambiguous as to the parking issue.

The Rosens also contend the designation of beneficiary provision is ambiguous. The provision specified: "Upon the death of [], this Lifetime Silver Spur membership will be transferred to [] for his lifetime only." As the Rosens assert, this provision is completely silent as to whether the beneficiary can be changed.

The University relies on this court's opinion in Abu-Shawareb v. S.C. State Univ., 364 S.C. 358, 613 S.E.2d 757 (Ct. App. 2005), to support its contention that the provision is not ambiguous. In Abu-Shawareb, this court found the absence of any mention of a bailment action in a settlement agreement in which the appellant released "any and all claims" against the respondent did not create an ambiguity that would allow the appellant to introduce parol evidence that the parties did not intend to include the bailment action in the agreement. Id. at 362-63, 613 S.E.2d at 759-60. This court noted silence alone does not create an ambiguity. Id. at 363, 613 S.E.2d at 760.

However, our supreme court and this court have also recognized when an agreement is silent as to a particular matter and because of the nature and character of the transaction an ambiguity arises, parol evidence may be admitted in order to supply a deficiency in the language of the contract. Penton v. J.F. Cleckley & Co., 326 S.C. 275, 281, 486 S.E.2d 742, 745 (1997); Lindsay v. Lindsay, 328 S.C. 329, 343, 491 S.E.2d 583, 591 (Ct. App. 1997); Ebert v. Ebert, 320 S.C. 331, 339, 465 S.E.2d 121, 126 (Ct.App.1995); U.S. Leasing Corp. v. Janicare, Inc., 294 S.C. 312, 318, 364 S.E.2d 202, 205, (Ct. App. 1988). Parol evidence is admissible not to contradict the terms of the written agreement but to determine the intent of the parties as to that particular matter. Id.

In the present case, the contracts did not specifically prohibit or allow a change of the designated beneficiary. It is impossible from the plain language of the contracts to determine if the parties intended to allow the change. Thus, we find this provision is also ambiguous.

We hold the trial court erred in holding the contracts were not ambiguous. Accordingly, the trial court's order granting summary judgment in favor of the University is

REVERSED AND REMANDED.[3]

SHORT, J., concurs. PIEPER, J., concurring in part and dissenting in part in a separate opinion.

HEPER, J., concurring in part and dissenting in part: I agree with the majority decision to reverse and remand as to the parking issue. However, I respectfully dissent as to the beneficiary issue and would affirm the trial court's determination that the contracts are unambiguous as to this issue and do not allow a change of beneficiary.

In regard to the beneficiary provisions, the contracts provided only as follows: "Upon the death of [], this lifetime Silver Spur membership will be transferred to [] for his lifetime only." As noted in the majority opinion, the contracts do not expressly permit or prohibit a change in beneficiaries. However, silence in the contracts regarding the ability to change beneficiaries does not necessarily render the contracts ambiguous. See Jordan v. Sec. Group, Inc., 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993) (holding silence alone does not create an ambiguity). Rather, the contracts are ambiguous only if the absence of language as to whether the Rosens may change beneficiaries renders the agreements reasonably susceptible to more than one interpretation. See Abu-Shawareb v. S.C. State Univ., 364 S.C. 358, 363, 613 S.E.2d 757, 760 (Ct. App. 2005) (holding an ambiguity arises only when a contract is either inconsistent on its face or reasonably susceptible to more than one interpretation); see also McNair v. United Energy Distribs., 390 S.C. 44, 53-54, 699 S.E.2d 723, 728 (Ct. App. 2010) (holding that where the language of a contract is plain and capable of legal construction, that language alone determines the instrument's force and effect). Looking to the language of the contracts, I find no inconsistencies. Also, I do not find the beneficiary provisions susceptible to more than one interpretation. Therefore, I would affirm the trial court's determination that the contracts are unambiguous in regard to the beneficiary provisions and do not permit the Rosens to change the named beneficiaries.

1] S.C. Code Ann. §§ 39–5–10 to –560 (1985 & Supp. 2010).

2] The Rosens abandoned their UTPA claim at the hearing.

3] Because of our disposition of this issue, we decline to address the Rosens' remaining issues and the University's arguments purporting to be additional sustaining grounds. See I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000) (holding it is within the appellate court's discretion whether to address any of respondent's additional sustaining grounds); Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating that if an appellate court's ruling on a particular issue is dispositive of an appeal, rulings on remaining issues are unnecessary).

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND J. Perry Kimball, George M. Lee, III, Mena H. Gardiner and John Love Plaintiff, vs. The University of South Carolina and The University of South Carolina Gamecock Club. Defendant.	)	IN THE COURT OF COMMON PLEAS 5th JUDICIAL CIRCUIT CASE NO.: 2012-CP-40-3924 **MOTION AND ORDER INFORMATION** **FORM AND COVERSHEET**

Plaintiff's Attorney:	Defendant's Attorney:
Julius W. Babb, IV, Bar No. 77216 Address: 1522 Lady Street, Columbia, S.C. 29201 Phone: 803-799-9530Fax 803-799-9533 E-mail: JayB@jlewiscromerlaw.comOther:	Bess J. Durant, Bar No. _____ Address: 1310 Gadsden Street, Columbia, SC 29211 Phone: _____ Fax_____ E-mail: _____Other: _____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Plaintiffs' Motion for Summary Judgment
Estimated Time Needed: 30m Court Reporter Needed: ☒YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Julius W. Babb
Signature of Attorney for ☒ Plaintiff /☐ Defendant

June 14, 2013
Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE CODE _____
Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	IN THE FIFTH JUDICIAL CIRCUIT
	)	
J. Perry Kimball, George M. Lee, III, Mena H. Gardiner and John Love	)	Civil Action No. 2012-CP040-3924
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
The University of South Carolina and The University of South Carolina Gamecock Club,	)	
	)	
Defendants.	)	
	)	

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

YOU WILL PLEASE TAKE NOTICE THAT pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Plaintiffs J. Perry Kimball, George M. Lee, III, Mena H. Gardiner and John Love (collectively the "plaintiffs") will move for an order granting summary judgment and holding the defendants liable for breach of contract.

In support of this motion the plaintiffs state the following:

1. The plaintiffs, members of the defendant University of South Carolina Gamecock Club ("Gamecock Club"), filed this lawsuit on June 7, 2012 and by way of their Amended Complaint alleges one cause of action against the defendants for Breach of Contract.

2. The plaintiffs were parties to separate clear and unambiguous contracts with the defendants guaranteeing them assigned and reserved parking privileges as lifetime members to the defendants University of South Carolina ("University") and Gamecock Club.

3. The defendants violated the contract by taking each plaintiffs' priority in parking in contravention of their contract rights.

4. The defendants are estopped from asserting any position contrary to the existence of plaintiffs' contract rights in fact due to their compliance with the same over several decades.

5. The defendants are collaterally estopped from asserting that any position contrary to the plaintiffs' contract rights in law or in fact due to the prior litigation of this issue on similar grounds, where defendants where a party represented by competent counsel in the same. *See Harvey J. Rosen, Joseph B. Rosen and Rebecca Nurick v. The University of South Carolina and The University of South Carolina Gamecock Club*, Op. No. 2011-UP-331 (S.C.CT.APP. filed June 27, 2011) (unpublished order of the South Carolina Court of Appeals (attached hereto)).

This motion is made pursuant to the South Carolina Rules of Civil Procedure, the pleadings, and all applicable statutory law and common law. This motion is made in good faith, supported by the sworn testimony and documents discovered in this case, supporting memoranda of law to be filed by plaintiffs' counsel prior to the hearing, and any memoranda or affidavits which they may file with the Court in support of this Motion or any arguments they may advance at any hearing.

[Signature Block on Next Page]

J. LEWIS CROMER & ASSOCIATES, LLC

BY: Julius W. Babb

J. Lewis Cromer (#1470)
Julius W. Babb, IV (#77216)
1522 Lady Street
Post Office Box 11675
Columbia, South Carolina 29211
Phone 803-799-9530
Fax 803-799-9533

Attorneys for Plaintiff

June 14, 2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner and John Love Plaintiffs, vs. The University of South Carolina and The University of South Carolina Gamecock Club, Defendants.	IN THE COURT OF COMMON PLEAS IN THE FIFTH JUDICIAL CIRCUIT Case No: 2012-CP-40-3924 **CERTIFICATE OF SERVICE**

I, undersigned employee of J. Lewis Cromer & Associates, L.L.C. hereby certify that I have on this the **14th day of June, 2013**, served a copy of the Plaintiff's Motion for Summary Judgment upon the above-named defendants counsel via U.S. Mail to:

Bess DuRant; Counsel for Defendants
Sowell Gray
1310 Gadsden Street
P. O. Box 11449
Columbia, SC 29211

Ashley Dickinson, Paralegal

Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mona H. Gardiner, and John Love,
[ ] Plaintiffs,

vs.

The University of South Carolina and The University of South Carolina Gamecock Club,
[X] Defendants.
Check box above indicating submitting party

IN THE [X] COURT OF COMMON PLEAS
[ ] FAMILY COURT
Civil Action No. 2012-CP-40-3924

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

RECEIVED
JUN 17 2013
J. LEWIS CROMER & ASSOCIATES, LLC

name, SC Bar no. and address of plaintiff's attorney	name, SC Bar no. and address of defendant's attorney
J. Lewis Cromer, Esquire Lewis Cromer & Associates, LLC 1522 Lady Street Post Office Box 11675 Columbia, South Carolina 29211 Telephone: 803-799-9530 Facsimile: 803-884-3595 Email: jlc@jlewiscromerlaw.com	Robert E. Stepp, Esquire (SC Bar 5335) Bess J. DuRant (SC Bar 77920) Sowell Gray Stepp & Laffitte, LLC Post Office Box 11449 Columbia, South Carolina 29211 Telephone: 803-929-1400 Facsimile: 803-929-0300 rstepp@sowellgray.com

2013 JUN 14 PM 1:47
JEANETTE W. WALDRIDE
C.C.P. & G.S.

[X] **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
[ ] **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
[ ] **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Defendants' Motion for Summary Judgment
Estimated Time Needed: 30 minutes Court Reporter Needed: YES [X] NO [ ]

SECTION II: Motion Type

[ ] Written motion attached
[ ] Form Motion:
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for [ ] Plaintiff [X] Defendant Date Submitted

SECTION III: Motion Fee

[X] PAID – AMOUNT: $25.00
[ ] EXEMPT: [ ] Rule to Show Cause in Child or Spousal Support
[ ] Domestic Abuse or Abuse and Neglect
(check reason) [ ] Indigent Status [ ] State Agency v. Indigent Party
[ ] Sexually Violent Predator Act [ ] Post Conviction Relief
[ ] Motion for Stay in Bankruptcy
[ ] Motion for Publication [ ] Motion for Execution (Rule 69, SCRCP)
[ ] Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
[ ] Other:

JUDGE'S SECTION

[ ] Motion Fee to be paid upon filing of the attached order.
[ ] Other:

JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

DATE FILED

Collected by: _____
(print name)

[ ] MOTION FEE COLLECTED: _____
[ ] CONTESTED – AMOUNT DUE: _____

SCCA/233 (1/2003)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	IN THE FIFTH JUDICIAL CIRCUIT
Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner, and John Love,	)	Civil Action No. 2012-CP-40-3924
Plaintiffs,	)	
vs.	)	**MOTION FOR SUMMARY JUDGMENT**
The University of South Carolina and The University of South Carolina Gamecock Club,	)	
Defendants.	)	

JEANETTE W. McBRIDE
C.C.P. & G.S.
2013 JUN 14 PM 1:4
RICHLAND COUNTY
FILED

Defendants the University of South Carolina and the University of South Carolina Gamecock Club (collectively "Defendants") hereby move pursuant to Rule 56 of the South Carolina Rules of Civil Procedure for an Order granting summary judgment in their favor in the above-captioned matter. There are no genuine issues of material fact, and Defendants are entitled to judgment as a matter of law.

This Motion should be granted because Defendants have neither breached Plaintiffs' respective contracts nor interfered with Plaintiffs' contractual rights. Plaintiffs are "Lifetime Members" of the Gamecock Club. Each of the Plaintiffs' Lifetime Memberships is memorialized in a memorandum of agreement ("Lifetime Membership Contract"). Plaintiffs' Lifetime Membership Contracts provide that Plaintiffs may enjoy "assigned reserved parking." The Lifetime Membership Contracts do not provide that Plaintiffs are entitled to specific parking spaces in perpetuity or that Lifetime Members will have any particular priority in the selection of parking spaces.

"Assigned reserved parking" has been provided to Plaintiffs in accordance with their Lifetime Membership Contracts. Consequently, Plaintiffs' inabilities to park on the apron of Williams Brice Stadium are not breaches of their Lifetime Membership Contracts as a matter of law. Therefore, this Court should grant summary judgment to Defendants.

This motion is based upon the pleadings in this case, as well as case law, statutory law, and any documents, affidavits, deposition testimony, discovery responses, or memorandum of law which may be submitted prior to the hearing on this matter.

Respectfully submitted,

SOWELL GRAY STEPP & LAFFITTE, LLC

By: _____

Robert E. Stepp
Bess J. DuRant
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Defendants The University of South Carolina and The University of South Carolina Gamecock Club

Columbia, South Carolina
June 14, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	IN THE FIFTH JUDICIAL CIRCUIT
Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner, and John Love,	)	Civil Action No. 2012-CP-40-3924
Plaintiffs,	)	**CERTIFICATE OF SERVICE**
vs.	)	
The University of South Carolina and The University of South Carolina Gamecock Club,	)	
Defendants.	)	

2013 JUN 14 P 1:57
JEANNE C.C.P. & G

I, the undersigned legal assistant, of the law offices of Sowell Gray Stepp & Laffitte, L.L.C., attorneys for Defendants, do hereby certify that I have served all counsel in this action with a copy of the document specified below by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Pleadings: Defendants' Motion for Summary Judgment

Counsel Served:
J. Lewis Cromer, Esquire
Tandi D. Ross, Esquire
Julius W. Babb, IV, Esquire
J. Lewis Cromer & Associates, LLC
Post Office Box 11675
Columbia, South Carolina 29211
Attorneys for Plaintiffs

Valerie N. H
Valerie Hampton

Columbia, South Carolina
June 14, 2013

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)))	IN THE COURT OF COMMON PLEAS IN THE FIFTH JUDICIAL CIRCUIT
Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner, and John Love, Plaintiffs, vs. The University of South Carolina and The University of South Carolina Gamecock Club, Defendants.	)	Civil Action No. 2012-CP-40-3924 **CONSENT WITHDRAWAL OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT WITHOUT PREJUDICE**

RICHLAND COUNTY
FILED
2012 NOV -2 PM 2:26
JEANNETTE W. McBRIDE
C.C.P. & G.S.

Plaintiffs hereby withdraw, with consent of the Defendants, Plaintiffs' Motion for Summary Judgment filed August 29, 2012 without prejudice, thereby reserving Plaintiffs' right to re-file its Motion for Summary Judgment at a later time. The basis for this withdrawal is that the parties believe they need to pursue additional discovery, and they may discover facts that the Court may consider to be pertinent with respect to the Plaintiffs' Motion for Summary Judgment.

Wherefore the Plaintiffs, with consent of Defendants, hereby withdraw the motion for summary judgment without prejudice.

[Signature Page Follows.]

J. LEWIS CROMER & ASSOCIATES, LLC

By: _____
J. Lewis Cromer
Tandi R. Card
Julius W. Babb, IV
1522 Lady Street
Post Office Box 11675
Columbia, South Carolina 29211
(803) 799-9530

Attorneys for Plaintiffs Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner, and John Love

WE SO CONSENT:

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: _____
Robert E. Stepp
Bess J. DuRant
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Defendants the University of South Carolina and the University of South Carolina Gamecock Club

Columbia, South Carolina
November 2, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	IN THE FIFTH JUDICIAL CIRCUIT
Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner, and John Love,	)	Civil Action No. 2012-CP-40-3924
Plaintiffs,	)	
vs.	)	**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS AND IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**
The University of South Carolina and The University of South Carolina Gamecock Club,	)	
Defendants.	)	

Defendants the University of South Carolina ("USC") and the University of South Carolina Gamecock Club ("Gamecock Club") submit this memorandum in support of their Motion to Dismiss the Amended Complaint and in opposition to Plaintiffs' Motion for Summary Judgment. Plaintiffs' Amended Complaint fails to state facts sufficient to constitute a cause of action because Plaintiffs have failed to allege facts that constitute a breach of contract or interference with their contractual rights as a matter of law. Plaintiffs' contracts with the Gamecock Club provide that Plaintiffs are entitled to "assigned reserved parking." Plaintiffs do not contend that they did not receive "assigned reserved parking." Consequently, Plaintiffs have failed to allege facts that would constitute a breach of their contracts or interference with their contractual rights. The undisputed facts and legal conclusions establish that Plaintiffs fail to allege facts sufficient to support a claim against Defendants, and therefore, Plaintiffs' Amended Complaint should be dismissed.

FACTS AND PROCEDURAL HISTORY

On June 7, 2012, Linda Rodarte, J. Perry Kimball, George M. Lee, Mena H. Gardiner, and Mitchell Bailey filed an action against the Defendants regarding the assignment of football parking spaces near Williams Brice Stadium. On July 6, 2012, Plaintiffs amended their Complaint to substitute John Love for Mitchell Bailey as a Plaintiff.[1] According to the Amended Complaint, Plaintiffs are "Life Members" of the Gamecock Club, which is an "organization which boosts and promotes USC athletics and with who[m] USC has partnered . . . in the awarding of privileges in attendance at athletic events on USC property based upon financial contributions made by supporters of athletics." (Am. Compl. ¶¶ 1, 4 & 8) Plaintiffs allege that "[a]t the highest levels, a lump sum one time gift, whether by cash, property or the purchase of a life insurance policy with the University as beneficiary results in lifetime right of the patron to the specified benefits given." (*Id.* ¶ 6.) Plaintiffs state that they are lifetime members because they made the requisite financial commitment and purchased life insurance policies with USC as the beneficiary. (*Id.* ¶ 8.)

As lifetime members, Plaintiffs contend that they should be afforded "assigned reserved parking at or near the stadium for football games." (*Id.* ¶ 9.) To support this contention, Plaintiffs cite to Exhibit A to their original Complaint. Exhibit A provides

[1] No discernable difference exists between the Complaint and the Amended Complaint, except for the substitution of plaintiffs and Plaintiffs' inadvertent failure to attach Exhibit A to their Amended Complaint. The Amended Complaint refers to Exhibit A, but no Exhibit A was attached. (*See* Am. Compl. ¶ 9.) Exhibit A was attached to the Complaint, however. Consequently, its contents are known and may be considered by this Court in connection with Defendants' Motion to Dismiss. A copy of Exhibit A is attached to Defendants' Motion to Dismiss for the Court's review.

that lifetime members may enjoy "assigned reserve parking." Exhibit A does not state that the "assigned reserved parking" is "at or near the stadium."

Plaintiffs state that they have been advised that they allegedly will no longer have the parking spaces immediately next to Williams Brice Stadium and will "be 'bumped down' in priority for lesser attractive, more distant[2] parking locations under a new priority plan which no longer allows life members to have highest priority before the priority of other members is considered." (*Id.* ¶ 12.) Plaintiffs contend that Defendants have breached their contracts by not providing Plaintiffs with the "appropriate priority in the selection of assigned and designated parking spaces at or near Williams Brice Stadium." (*Id.* ¶ 14.) Due to this alleged breach, Plaintiffs ask that this Court prevent Defendants from interfering with the contractual rights of the lifetime members, specifically the alleged right of lifetime members to have the highest priority for parking at football games.

In response to Plaintiffs' Amended Complaint, Defendants filed a Motion to Dismiss on July 24, 2012, stating that Plaintiffs' Amended Complaint should be dismissed because Plaintiffs have failed to allege that Defendants breached a contract or interfered with any alleged contractual rights. The Court scheduled a hearing on Defendants' Motion to Dismiss for Tuesday, September 11, 2012. On August 29, 2012, Plaintiffs filed a Motion for Summary Judgment requesting that their Motion for Summary Judgment also be heard on September 11, 2012.

Plaintiffs contend that they are entitled to summary judgment because Plaintiffs were parties "to separate clear and unambiguous contracts with the defendants

[2] This parking is in the new parking facility directly across Bluff Road from the stadium.

guaranteeing them assigned and reserved parking privileges as lifetime donors . . ." and that Defendants breached these "unambiguous contracts" by "taking each plaintiffs' priority in parking . . . ." (Pls.' Mot. for Summ. J. ¶¶ 2-3.) Second, Plaintiffs argue that they are entitled to summary judgment because Defendants are estopped from denying the existence of Plaintiffs' contractual rights. (*Id.* ¶ 4.) Finally, Plaintiffs state that they are entitled to summary judgment because Defendants are collaterally estopped from taking any position contrary to "plaintiffs' contract rights in law or in fact" because similar matters were addressed in an unpublished opinion issued by South Carolina Court of Appeals in the matter of *Rosen v. The University of South Carolina*, Op. No. 2011-UP-331 (S.C. Ct. App. filed June 27, 2011) ("*Rosen*"). Plaintiffs support their Motion for Summary Judgment with their memorandum of law and the Affidavit of George Lee.

In his affidavit, George Lee states that when he entered into his contract he "was guaranteed assigned and reserved parking in consideration for becoming a lifetime full scholarship member in the University of South Carolina Gamecock Club ("Gamecock Club")." (Sworn Aff. of George Lee ¶ 3.) He further states that since entering the contract, he was given parking space 314 and "had use of such priority up until the summer of 2012" and that others have been given priority above his, which is "in contravention of [his] contract rights." (*Id.* ¶¶ 5, 6.) Finally, he contends that the Gamecock Club's past course of dealing has been disregarded and that his contractual rights have been violated. (*Id.* ¶ 7.)

LEGAL STANDARDS

I. STANDARD FOR MOTION TO DISMISS

A ruling on a 12(b)(6) motion to dismiss for failure to state a claim must be based "solely upon the allegations set forth on the face of the Complaint." *Food Lion, Inc. v. United Food & Commercial Workers Internat'l Union*, 351 S.C. 65, 69, 567 S.E.2d 251, 253 (Ct. App. 2002); *Dye v. Gainey*, 320 S.C. 65, 67, 463 S.E.2d 97, 98 (Ct. App. 1995). A motion to dismiss should be granted if the facts and inferences therefrom would not entitle a Plaintiff to "any relief on any theory of the case." *Stiles v. Onorato*, 318 S.C. 397, 400, 457 S.E.2d 601, 603 (1995); *Dye*, 320 S.C. at 67-68, 463 S.E.2d at 99; *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987). "The question is whether in the light most favorable to the Plaintiff, and with every doubt resolved in her behalf, the Complaint states any valid claim for relief." *Toussaint*, 292 S.C. at 416, 357 S.E.2d at 9.

In the present case, Plaintiffs have failed to state any facts that under any circumstances would support a cause of action against Defendants, and therefore, this Court should grant the Defendants' Motion to Dismiss.

II. STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate if the pleadings and other supporting documents "show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. In determining whether to grant summary judgment, a court must view the evidence and its reasonable inferences in the light most favorable to the nonmoving party. *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003). "[E]ven if there is no dispute

regarding the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." *Montgomery v. CSX Transp., Inc.*, 376 S.C. 37, 47, 656 S.E.2d 20, 25 (2008). "In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence." *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011) (citing *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009)).

ARGUMENT

I. THIS COURT SHOULD GRANT DEFENDANTS' MOTION TO DISMISS BECAUSE THE UNAMBIGUOUS CONTRACTUAL TERMS ESTABLISH ONLY THAT PLAINTIFFS MAY ENJOY "ASSIGNED RESERVED PARKING."

The clear, unambiguous terms of Plaintiffs' contracts provide that "assigned reserved parking" will be afforded to Plaintiffs. The contracts do not provide that Plaintiffs are entitled to a specific parking space or parking "at or near Williams Brice Stadium." Nor do the contracts make any statement about Plaintiffs' priority for purposes of the assignment of parking spaces. Plaintiffs' strained interpretation of the contracts is incorrect and cannot support their breach of contract claim.

"The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." *Madden v. Bent Palm Investments, LLC*, 386 S.C. 459, 464-65, 688 S.E.2d 597, 600 (Ct. App. 2010) (quoting *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009)). To determine the parties' intention, courts first look to the contractual language. *Warner v. Warner*, 280 S.C. 81, 83, 311 S.E.2d 78, 79 (1983). Contracts are "unambiguous if they are not 'susceptible to more than one reasonable interpretation . . . .'" *Stevens Aviation, Inc. v.*

DynCorp Int'l LLC, 394 S.C. 300, 307, 715 S.E.2d 655, 659 (Ct. App. 2011) (quoting *TEG–Paradigm Envtl., Inc. v. U.S.*, 465 F.3d 1329, 1338 (Fed. Cir. 2006)). The determination of whether the language of a contract is unambiguous is a question of law for the court. *ESA Services, LLC v. S.C. Dept of Revenue*, 392 S.C. 11, 20, 707 S.E.2d 431, 436 (Ct. App. 2011). Similarly, "the construction of a clear and unambiguous contract is a question of law for the court." *Id.*

"If the contract's language is clear and unambiguous, the language alone determines the contract's force and effect." *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003). In other words, a court must look only to the four corners of the contract to determine the parties' intent and "'when such contract is clear and unequivocal, its meaning must be determined by its contents alone.'" *Silver v. Aabstract Pools & Spas, Inc.*, 376 S.C. 585, 591, 658 S.E.2d 539, 542 (Ct. App. 2008) (quoting *McPherson v. J.E. Sirrine & Co.*, 206 S.C. 183, 204, 33 S.E.2d 501, 509 (1945)). Courts cannot read words into a contract "which import an intent wholly unexpressed when the contract was executed." *McPherson*, 206 S.C. at 204; 33 S.E.2d at 509. Moreover, courts must give the contractual terms contained in the four corners of the document their plain, ordinary, and popular meaning when a contract is clear and unambiguous. *Wachovia Bank v. Blackburn*, 394 S.C. 579, 585, 716 S.E.2d 454, 457-58 (Ct. App. 2011).

Here, the contract's language is abundantly clear and unambiguous. As explicitly stated in Exhibit A to the contracts, Plaintiffs are entitled to "assigned reserved parking." The contract does not grant Plaintiffs specific spaces nor does it grant Plaintiffs spaces "at or near the stadium." Nor does it address the priority that Plaintiffs have with respect

to the assignment of those spaces. It simply states that "assigned reserved parking" is available for the Plaintiffs. Regarding the location of parking spaces, nothing more and nothing less are promised to the Plaintiffs. The contractual term is clear. "Assigned reserved parking" has been provided to the Plaintiffs, and therefore, there is no breach of the clear contractual term. Plaintiffs' Amended Complaint has failed to state facts sufficient to constitute a cause of action against Defendants because Defendants, as a matter of law, have not breached any contracts with Plaintiffs. This Court should grant Defendants' Motion to Dismiss.

II. THIS COURT SHOULD DENY PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT.

Plaintiffs' Motion for Summary Judgment fails for four reasons. First, the contracts are unambiguous and clear, as admitted by Plaintiffs, and provide that Plaintiffs may enjoy "assigned reserved parking," which has been provided to them. Defendants have not breached the contracts, and therefore, Plaintiffs' breach of contract claim fails as a matter of law. Second, Defendants are not equitably estopped from arguing that non-lifetime members can have a higher priority than Plaintiffs. Plaintiffs' rights and privileges as lifetime members are detailed in the contracts, and the contracts do not provide that they have priority over any other Gamecock Club members. Third, Defendants are not collaterally estopped by *Rosen* because *Rosen* involved different issues. Its application to this case is misguided. Finally, summary judgment is improper at this point because Plaintiffs have introduced facts through the Affidavit of George Lee that Defendants have not had the opportunity to investigate through the deposition of George Lee or other discovery.

A. Defendants Have Not Breached the Clear and Unambiguous Contractual Terms.

As discussed above, the contract clearly states the Plaintiffs may enjoy "assigned reserved parking." In fact, Plaintiffs agree that the contract is unambiguous. In their Motion for Summary Judgment, Plaintiffs state that they are "parties to separate ***clear and unambiguous contracts*** with the defendants guaranteeing them assigned and reserved parking privileges as lifetime donors . . . ." (Pls.' Mot. for Summ. J. ¶ 2 (emphasis added).) Plaintiffs also contend, however, that the contract may contain ambiguities, which must be construed against the drafter. (Mem. in Supp. Of the Pls.' Mot. for Summ. J. 3.) Construction of an ambiguous contract is a question of fact. *Skull Creek Club Ltd. P'ship v. Cook & Book, Inc.*, 313 S.C. 283, 286, 437 S.E.2d 163, 165 (Ct. App. 1993). Such an issue, if it exists, would itself defeat the claim for summary judgment in favor of Plaintiffs.

Parties cannot, however, create ambiguities when the contract itself does not contain any ambiguities. *Silver v. Aabstract Pools & Spas, Inc.*, 376 S.C. 585, 591, 658 S.E.2d 539, 542 (Ct. App. 2008) ("Homeowner cannot create ambiguity when it does not exist within the four corners."). "A contract is ambiguous when it is capable of more than one meaning or when its meaning is unclear." *ESA Services, LLC v. S.C. Dept. of Revenue*, 392 S.C. 11, 20, 707 S.E.2d 431, 436 (Ct. App. 2011). A contract's silence does not generally create an ambiguity. *Jordan v. Sec. Group, Inc.*, 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993).

The determination of whether the contract contains ambiguities is a question of law for a court. *Miles v. Miles*, 393 S.C. 111, 117-18, 711 S.E.2d 880, 883 (2011). If a court determines that a contract contains ambiguities, the court may admit extrinsic

evidence to determine the parties' intent. *Id.* Under those circumstances, the determination of the parties' intent is a question of fact. *Id.* Consequently, "'[s]ummary judgment is improper when there is an issue as to the construction of the written contract and the contract is ambiguous because the intent of the parties cannot be gathered from the four corners of the instrument.'" *Wallace v. Day*, 390 S.C. 69, 73-74, 700 S.E.2d 446, 448-49 (Ct. App. 2010) (quoting *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009)). In the absence of an ambiguity, however, the parties' intent is a question of law to be determined by the agreement itself.

First and foremost, the contract at issue is not ambiguous because the contractual term of "assigned reserved parking" is not capable of more than one meaning and is not unclear. "Assigned reserved parking" is abundantly clear and cannot be capable of having another meaning. However, even if an ambiguity did exist, this case is not capable of being disposed at summary judgment because the determination of the parties' intent is a question of fact. Summary judgment is improper at this stage, and this Court should deny Plaintiffs' Motion for Summary Judgment.

B. Equitable Estoppel Does Not Affect the Contractual Rights of Plaintiffs.

Plaintiffs contend that "defendants are estopped from asserting any position contrary to the existence of plaintiffs' contract rights in fact due to their compliance with the same over several decades." (Pls.' Mot. for Summ. J. ¶ 4.) Defendants are not taking any position "contrary to the existence of plaintiffs' contract rights . . . ." "Assigned reserved parking" is available for Plaintiffs. Moreover, the contract speaks for itself, and Plaintiffs cannot rely on equitable estoppel to supplement the benefits and privileges afforded to them by their respective contracts.

For a party to prove equitable estoppel, the party must establish the following elements as to the party estopped:

> (1) conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intention, or at least expectation, that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the real facts.

Langdale v. Carpets, 395 S.C. 194, 204-05, 717 S.E.2d 80, 85 (Ct. App. 2011). Additionally, the party must prove the following elements as to himself: "(1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) reliance upon the conduct of the party estopped, and (3) prejudicial change in position." *Id.* at 205, 717 S.E.2d at 85.

First, Plaintiffs cannot show any conduct amounting to a false representation or concealment of material facts by Defendants. Neither the Amended Complaint nor the Affidavit of George Lee alleges any conduct that amounts to a false representation or concealment of material facts. Moreover, neither the Amended Complaint nor the Affidavit of George Lee establishes that the Defendants had an intention or expectation that the Plaintiffs would act upon such false representations. Plaintiffs cannot establish the elements of equitable estoppel as to the parties being estopped.

Regarding the Plaintiffs (the parties asserting estoppel), the fact in question regarding parking is that Plaintiffs may enjoy "assigned reserved parking." Plaintiffs have made no other allegations or presented any evidence that anything other than "assigned reserved parking" was promised. In fact, George Lee testified in his affidavit that "[o]n May 9, 1990, I entered into a contract with the defendants whereby I was guaranteed assigned and reserved parking in consideration for becoming a lifetime full

scholarship member in the University of South Carolina Gamecock Club ("Gamecock Club")." (Sworn Aff. of George Lee ¶ 3.) Although Plaintiffs argue that a promise regarding priority was made, no such promise is contained in the written agreement, and no evidence regarding such a promise is contained in George Lee's affidavit. Thus, Plaintiffs have not presented any evidence that they were without the means of knowing that whatever priority they enjoyed could be changed.

Second, Plaintiffs have not stated in their Amended Complaint or the Affidavit of George Lee how they have relied upon the conduct of Defendants and how this reliance has caused a prejudicial change in position. Plaintiffs' claim for equitable estoppel fails as a matter of law, and this Court should deny Plaintiffs' Motion for Summary Judgment.

C. *Rosen* Does Not Collaterally Estop Defendants in This Case.

Rosen involved the issue of whether lifetime members had to pay for parking at football games.[3] This case involves the issue of whether lifetime members are entitled to parking rights beyond those described as "assigned reserved parking." The question of whether "assigned reserved parking" is ambiguous was never raised and never litigated in *Rosen*. The issues raised in *Rosen* and in this case are separate, and therefore, *Rosen* has no preclusive effect on this case.

Issue preclusion, also known as collateral estoppel, "prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same." *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). "The party

[3] *Rosen* is an unpublished opinion and has no precedential value and should not be cited or relied on as precedent in any proceeding except in those in which the unpublished opinion is directly involved. Rule 268(d)(2), SCACR.

asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." *Id.* (citing *Beall v. Doe*, 281 S.C. 363, 369 n.1, 315 S.E.2d 186, 189-90 n.1 (Ct. App. 1984)).

Here, the present issue is the meaning of "assigned reserved parking." Consequently, the issue of "assigned reserved parking" was not actually litigated in the prior action. Nor was the issue of "assigned reserved parking" determined in *Rosen*. Nor was its determination necessary to support the prior judgment. Plaintiffs cannot establish the elements of collateral estoppel, as a matter of law.

Plaintiffs try to contort the *Rosen* issue so that it mirrors the present issue. Specifically, Plaintiffs contend that the issue reached in *Rosen* was a determination that "the lifetime donor contracts were ambiguous as to the term 'assigned and reserved' and that the defendants' course of dealing was admissible parol evidence to shed light on the intention of that term." (Mem. in Supp. Of the Pls.' Mot. for Summ. J. 5.) This statement is an incorrect interpretation of the Court of Appeals' holding. Addressing whether lifetime members could be charged for parking in light of the contract, the South Carolina Court of Appeals looked to the description of tickets and parking in Exhibit A. The court of appeals concluded that because similar language was used to describe tickets and parking, yet lifetime members always had paid for tickets and not for parking, then an ambiguity exists as to whether lifetime members had to pay for parking. However, the *Rosen* issue is ***not*** the issue in this case, and any ambiguity that may have existed with respect to the *Rosen* issue is not applicable to the present case.

Plaintiffs' contention that Defendants are collaterally estopped is unsound. In fact, if anyone should be estopped from asserting a contrary position, it should be Plaintiff George Lee. In a prior action brought by Lee regarding the contract at issue, the court concluded, and ***Lee agreed***, that the contract is unambiguous.[4] Now, Lee is arguing that the contract is ambiguous. He cannot maintain both positions. This Court should reject Plaintiffs' collateral estoppel argument and hold that *Rosen* has no preclusive effect regarding the meaning of "assigned reserved parking."

D. Plaintiff's Motion for Summary Judgment is Premature.

Courts should not grant summary judgment "until the opposing party has had a full and fair opportunity to complete discovery." *Doe v. Batson*, 345 S.C. 316, 322, 548 S.E.2d 854, 857 (Ct. App. 2001). Summary judgment "is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." *BPS, Inc. v. Worthy*, 362 S.C. 319, 325, 608 S.E.2d 155, 159 (Ct. App. 2005) (citing *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 534 S.E.2d 688 (2000)). "Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is a disagreement concerning the conclusion to be drawn from those facts." *Id.* at 325-26, 608 S.E.2d at 159 (citing *Moriarty v. Garden Sanctuary of God*, 341 S.C. 320,

[4] Lee's prior action is styled as *George M. Lee, III and Elizabeth Sims v. University of South Carolina and the University of South Carolina Gamecock Club*, Civil Action Number 2009-CP-40-00189 ("*Lee* Action"). A copy of the Order and Judgment on Behalf of Defendants ("Order") is attached hereto as **Exhibit A**. In the *Lee* Action, George Lee argued that as a lifetime member he did not have to participate in the Yearly Equitable Seating ("YES"), which assigned a donation to every seat in Williams Brice Stadium. (Order, Conclusions of Law ¶ 1.) After a trial on the merits, the court rejected Lee's position. The court concluded, and Lee agreed, that the contract was unambiguous. The Order states "[t]his Court concludes, ***and the parties agree***, the Agreement is unambiguous on its face." (Order ¶ 2 (emphasis added).)

534 S.E.2d 672 (2000); *Ellis v. Davidson*, 358 S.C. 509, 595 S.E.2d 817 (Ct. App. 2004)).

If this Court does not grant Defendants' Motion to Dismiss, it should not grant Plaintiffs' Motion for Summary Judgment. First, Plaintiffs submitted the Affidavit of George Lee, and Defendants have not had the opportunity to depose him or any other Plaintiff. If this Court denies Defendants' Motion to Dismiss, Defendants should be able to proceed with discovery to develop their case. Defendants have filed a Rule 56(f) affidavit to support this argument, and a filed copy of Defendants' Rule 56(f) Affidavit is attached hereto as **Exhibit B**.

Second, to the extent this Court views the contract is ambiguous, summary judgment is not appropriate. As discussed above, summary judgment should not be granted when issues exist as to the construction of the contact and when the intent of the parties cannot be determined by a study of the four corners of the contract. *See Wallace v. Day*, 390 S.C. 69, 73-74, 700 S.E.2d 446, 448-49 (Ct. App. 2010). By their own argument that an ambiguity allegedly exists, Plaintiffs defeat their own motion for summary judgment. Consequently, this Court should deny Plaintiff's Motion for Summary Judgment.

CONCLUSION

For the reasons set forth above, and based on the pleadings in this action, Defendants respectfully requests that this Court grant their Motion to Dismiss and deny Plaintiffs' Motion for Summary Judgment.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: _____

Robert E. Stepp
Bess J. DuRant
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Defendants

Columbia, South Carolina
September 10, 2012

DLSCN 06/22/12

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2009CP4000189

George M Lee III
Elizabeth Sims
PLAINTIFF(S)

University Of South Carolina
University of South Carolina Gamecock Club
DEFENDANT(S)

Submitted by: _____ | Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ ACTION DISMISSED (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ ACTION STRICKEN (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

RICHLAND COUNTY FILED 2012 JUN 20 AM 9:17 JEANETTE W. McBRIDE C.C.P. & G.S.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment In Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on 20 day of June, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20 _____ to attorneys of record or to parties (when appearing pro se) as follows:

Mark Weston Hardee
ATTORNEY(S) FOR THE PLAINTIFF(S)

William H Davidson II Joel S. Hughes
ATTORNEY(S) FOR THE DEFENDANT(S)

_____
Court Reporter

Jeanette W. McBride
Clerk of Court , Jeannette McBride

EXHIBIT A
tabbies
000139

SCRCP Form 4C (10/2011)

DLSCN 06/22/12

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
George M. Lee, III, and Elizabeth Sims, Plaintiffs, v.	)	Civil Action Number: 2009-CP-40-00189
University of South Carolina and the University of South Carolina Gamecock Club, Defendants.	)	ORDER AND JUDGMENT ON BEHALF OF DEFENDANTS

FILED
2012 JUN 20 AM 11:17
JEANETTE W. WALKER
C.C.P. & G.S.
RICHLAND COUNTY

This matter is before this Court pursuant to a non-jury Complaint requesting a declaratory judgment to determine if the Plaintiffs are entitled to tickets at various University of South Carolina Sports facilities without further compensation based on a Memorandum of Agreement dated March 9, 1990. A trial was held in this matter on May 9, 2012. Present for the Plaintiff as counsel was Mark Hardee. Present for the Defendants as counsel were Will Davidson and Joel Hughes. After carefully considering the record before this court, including the exhibits and testimony set forth in this trial, this Court hereby finds for the Defendants, University of South Carolina and the University of South Carolina Gamecock Club.

FINDINGS OF FACT

This Court finds the facts as follows:

1. Prior to March 9, 1990, Plaintiff[1] had been a member of the Gamecock Club at the Full Scholarship membership level. In order to maintain Gamecock Club membership at the Full Scholarship level, Plaintiff was required to pay $1,000.00 annually.

[1] No evidence was submitted by or on behalf of Elizabeth Sims at trial. Accordingly, she has abandoned her claims. Thus, "Plaintiff" refers to George M. Lee, III.

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2. The Plaintiff entered into Memorandum of Agreement (the "Agreement") with the Defendants on March 9, 1990, which is Plaintiff's Exhibit No. 1. The Agreement consists of three pages of numbered paragraphs and an Exhibit A.

3. As part of the Agreement, the Plaintiff was required to irrevocably assign to the Gamecock Club, as sole owner and beneficiary, a whole life insurance policy valued at a minimum of $100,000.00. The Plaintiff was to pay the premium payments of at least $1,000.00 annually for eight years until the policy was paid up.

4. During the first eight years, in exchange for paying the premiums, Plaintiff was entitled to the Lifetime Scholarship level of membership in the Gamecock Club.

5. After eight years, the Agreement provided two options: 1) make no further contributions to the Gamecock Club and revert back to Full Scholarship membership level; or, 2) continue paying $500.00 annually to maintain Lifetime Full Scholarship membership in the Gamecock Club.

6. According to the Agreement, as a Lifetime Full Scholarship member of the Gamecock Club, Plaintiff would "have the opportunity to purchase tickets entitled to the Gamecock Level or membership presently held." The Agreement further read "[t]here will be no guarantee as to where ticket assignments will be located. Assignments will be made according to membership priority in accordance with the Gamecock Club By-laws." Exhibit A to the Agreement noted the Plaintiff was to receive "Four Season Football Tickets (Best Available)" and "Additional Four Season Football Tickets (Total of 8)" amongst other benefits.[2]

[2] Neither party disputes that Plaintiff has always been and still is required to purchase those season tickets.

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7. Since entering into the Agreement, the Plaintiff has bought from the University's Athletic Department football season tickets and received four seats in Section 5 (50 yard line, lower level, West side) and four seats in Section 103.[3]

8. Prior to the 2009 football season, the University's Athletic Department implemented the Yearly Equitable Seating (YES) Program, which assigned a seat donation to every season ticket in Williams-Brice Stadium.

9. The seat donation was implemented in lieu of raising ticket prices because the donation format was more fan-friendly in that it provided certain tax benefits.

10. All Gamecock Club members who purchase season tickets in the stadium are responsible for paying the seat donation attached to the ticket. Since implementing the program, the Plaintiff has paid for his season tickets, including the seat donations attached to each ticket, under a reservation of rights. The University Athletic Department has provided the Plaintiff with these season tickets in accordance with his timely payments.

11. Seat donations under the YES Program, along with ticket prices, go to the University's Athletic Department to fund facility upgrades. Gamecock Club membership dues are retained by the Club to fund scholarships for student-athletes.

12. The benefit of Plaintiff's bargain was that he was able to receive the benefits of a higher level of membership in the Gamecock Club and not have to pay Gamecock Club dues yearly.

CONCLUSIONS OF LAW

Based on the findings of fact, this Court makes the following conclusions of law:

[3] The Plaintiff testified during trial these seats originally were his father's tickets, but the Gamecock Club worked with him and allowed him the opportunity to purchase those same seats after his father passed away.

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1. The Plaintiff alleges the Defendants breached the Agreement by implementing the YES Program and requiring him to pay the seat donation as well as the price published on the ticket. The Defendants assert they have fully complied with all terms of the Agreement, and thus, the Plaintiffs' cause of action must fail.

2. This Court concludes, and the parties agree, the Agreement is unambiguous on its face. When a contract is clear and unambiguous, the construction of the contract is a question of law for the court. *Moser v. Gosnell*, 334 S.C. 425, 430, 513 S.E.2d 123, 125 (Ct. App. 1999). In construing the terms of a contract, the foremost rule is that the court must give effect to the intentions of the parties by looking *to the language of the contract. Id.* (emphasis added). When the language of a contract is clear, explicit, and unambiguous, the language of the contract *alone* determines the contract's force and effect and the court must construe it according to its plain, ordinary, and popular meaning. *Id.* Because the Agreement is unambiguous, extrinsic evidence is not admissible to create an ambiguity or to show the intent of the parties. *Bellamy v. Bellamy*, 292 S.C. 107, 111, 355 S.E.2d 1, 4 (Ct. App. 1987) (holding that extrinsic evidence is admissible to resolve ambiguities, not create them, and the parties' intent must be determined from within the four corners of an unambiguous contract).

3. The Plaintiff introduced a number of documents, outside the four corners of the Agreement, purportedly to explain its rationale and the intent of the parties[4]. Because the language and terms of the Agreement are unambiguous, those documents are extrinsic evidence and are not admissible to either create an ambiguity or to determine the intent of the parties.

[4] Defendants made contemporaneous objections to the introduction of these documents. Even if the Court considers this extrinsic evidence, the conclusions of the Court would not change.

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4. As previously noted, the Agreement provided the Plaintiff "the opportunity to purchase tickets entitled to the Gamecock Level or membership presently held." At the time the Agreement was executed, the Plaintiff was a Full Scholarship level member. Thus, by executing the Agreement, he became a Lifetime Full Scholarship member. He was entitled to no more and no less than any other Gamecock Club member at the Full Scholarship level. It is without dispute that all Gamecock Club members, including all Full Scholarship level members, are required to pay the applicable seat donation prior to receiving their tickets.

5. The Plaintiff clearly retains the opportunity to purchase tickets. He concedes he has continuously, without interruption, received his tickets in exchange for his payment of the seat donation and the face value of the season tickets. The implementation of the YES Program does not interfere with the Plaintiff's "opportunity to purchase tickets," which remains fully intact[5]. Since the Plaintiff has not demonstrated, and the evidence does not show, that he has ever been denied the opportunity to purchase his season tickets, the Defendants have not breached the Agreement.

6. Because the Agreement in question is not ambiguous, this Court declines to read any ambiguity into the document. Likewise, the Court declines to look anywhere other than within the four corners of the Agreement to determine the intent of the parties. As the Defendants have complied with the terms of the Agreement, there can be no action for breach of contract. Accordingly, this cause of action is dismissed.

[5] The Court, however, would note the Defendants implemented the YES Program in attempt to benefit all Gamecock Club members by creating the seat donation, which provides a tax benefit. The Court recognizes, and the Plaintiff concedes, the Defendants simply could have increased ticket prices in line with the funds raised by the YES Program, which would have been ineligible for any tax benefit as the cost of the ticket.

5 NB

DLSCN 06/22/12

CONCLUSION

Therefore, this Court hereby enters judgment on behalf of the Defendants as to all counts, and therefore, this matter is dismissed.

IT IS SO ORDERED.

The Honorable Deandrea G. Benjamin
Circuit Judge for The Fifth Judicial Circuit

Columbia, South Carolina

6-18, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	IN THE FIFTH JUDICIAL CIRCUIT
Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner, and John Love,	)	Civil Action No. 2012-CP-40-3924
Plaintiffs,	)	
vs.	)	RULE 56(f) AFFIDAVIT
The University of South Carolina and The University of South Carolina Gamecock Club,	)	
Defendants.	)	

RICHLAND COUNTY
FILED
2012 SEP -7 AM 10:21
JEANETTE W. McBRIDE
C.C.P. & G.S.

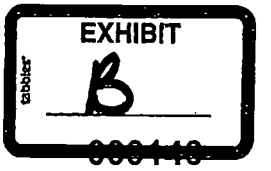
PERSONALLY appeared before me, Robert E. Stepp, who being duly sworn deposes and says:

1. I am an attorney licensed to practice law in the State of South Carolina.

2. I represent Defendants the University of South Carolina and the University of South Carolina Gamecock Club in the above-captioned action.

3. On June 7, 2012, Plaintiffs commenced this action with the filing of the Summons and Complaint seeking to enjoin the Defendants from interfering with Plaintiffs' alleged contractual rights concerning football parking at Williams Brice Stadium. On July 6, 2012, Plaintiffs amended their Complaint to substitute Plaintiff John Love with a previously named plaintiff.

4. On July 24, 2012, Defendants filed a Motion to Dismiss stating that Plaintiffs failed to state facts sufficient to constitute a cause of action against Defendants



because Plaintiffs have failed to allege that Defendants breached any contract or interfered with any contractual rights.

5. This Court scheduled a hearing on Defendants' Motion to Dismiss for September 11, 2012.

6. On August 29, 2012, Plaintiffs filed a Motion for Summary Judgment, simultaneously contending that the contracts are both unambiguous and ambiguous.

7. Plaintiffs supported their Motion for Summary Judgment with the Sworn Affidavit of George Lee, which was also filed on August 29, 2012.

8. Defendants have not had the opportunity to depose George Lee or any other Plaintiff.

9. To the extent that any factual determinations are necessary to decision on Plaintiffs' Motion for Summary Judgment, Defendants have not had the opportunity to discover facts that the Court may consider to be pertinent.

10. Accordingly, Defendants contend that a determination by this Court of the issues raised by Plaintiffs' Motion for Summary Judgment should not be made until the discovery process has concluded.

FURTHER AFFIANT SAYETH NAUGHT.

Robert E. Stepp

SWORN TO BEFORE ME THIS
7th day of September, 2012
Kimberly Woodward (L.S.)
Notary Public for South Carolina
My Commission Expires: 11/7/21

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	IN THE FIFTH JUDICIAL CIRCUIT
Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner, and John Love,	)	Civil Action No. 2012-CP-40-3924
Plaintiffs,	)	**CERTIFICATE OF SERVICE**
vs.	)	
The University of South Carolina and The University of South Carolina Gamecock Club,	)	
Defendants.	)	

I, the undersigned paralegal of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for Defendants The University of South Carolina and The University of South Carolina Gamecock Club, do hereby certify that I have served all counsel in this action with a copy of the document specified below by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Document: Memorandum in Support of Defendants' Motion to Dismiss and in Opposition to Plaintiffs' Motion for Summary Judgment

Counsel Served:
J. Lewis Cromer, Esquire
Tandi D. Ross, Esquire
Julius W. Babb, IV, Esquire
Lewis Cromer & Associates, LLC
1522 Lady Street
Post Office Box 11675
Columbia, South Carolina 29211
Attorneys for Plaintiffs

Kimberly Woodworth

September 10, 2012
Columbia, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF Richland Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner and Mitchell Bailey Plaintiff, vs. The University of South Carolina and The University of South Carolina Gamecock Club. Defendant.	)	IN THE COURT OF COMMON PLEAS 5th JUDICIAL CIRCUIT CASE NO.: 2012-CP-40-3924 **MOTION AND ORDER INFORMATION** **FORM AND COVERSHEET**

RICHLAND COUNTY FILED 2012 AUG 29 PM 4:56 JEANETTE W. McBRIDE C.C.P. & G.S.

Plaintiff's Attorney:	Defendant's Attorney:
Julius W. Babb, IV, Bar No. 77216 Address: 1522 Lady Street, Columbia, S.C. 29201 Phone: 803-799-9530Fax 803-799-9533 E-mail: JayB@jlewiscromerlaw.comOther: ____	Edwin E. Evans, Bar No. ____ Address: The University of South Carolina Office of General Counsel, Osborne Building, 915 Bull Street, Columbia, SC 29208 Phone: ____ Fax____ E-mail: ____Other: ____

☒**MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐**FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐**PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Memorandum in Support of the Plaintiff's Motion for Summary Judgment
Estimated Time Needed: 30m Court Reporter Needed: ☒YES/☐ NO

SECTION II: Motion/Order Type

☐Written motion attached
☐Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

J. Lewis Cromer
Signature of Attorney for ☒ Plaintiff /☐ Defendant

8/29/2012
Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ ____
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: ____
☐ Other: ____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: ____	JUDGE CODE ____ Date: ____

000149

CLERK'S VERIFICATION

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SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS IN THE FIFTH JUDICIAL CIRCUIT
Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner and John Love Plaintiffs, vs. The University of South Carolina and The University of South Carolina Gamecock Club, Defendants.	)	Civil Action No. 2012-CP040-3924

JEANETTE W. McBRIDE
C.C.P. & G.S.
2012 AUG 29 PM 4:40
RICHLAND COUNTY
FILED

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

YOU WILL PLEASE TAKE NOTICE THAT pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Plaintiffs Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner and John Love (collectively the "plaintiffs") will move for an order granting summary judgment and holding the defendants liable for breach of contract. The plaintiffs request that this motion be heard at the same time as the hearing for Defendants' Motion to Dismiss scheduled for September 11, 2012 at 11:00 A.M.

In support of this motion the plaintiffs state the following:

1. The plaintiffs, members of the defendant University of South Carolina Gamecock Club ("Gamecock Club"), filed this lawsuit on June 7, 2012 and by way of their Amended Complaint alleges one cause of action against the defendants for Breach of Contract.

2. The plaintiffs were parties to separate clear and unambiguous contracts with the defendants guaranteeing them assigned and reserved parking privileges as lifetime donors to the

defendant University of South Carolina ("University") and silver spur members of the defendant Gamecock Club.

3. The defendants violated the contract by taking each plaintiffs' priority in parking in contravention of their contract rights.

4. The defendants are estopped from asserting any position contrary to the existence of plaintiffs' contract rights in fact due to their compliance with the same over several decades.

5. The defendants are collaterally estopped from asserting that any position contrary to the plaintiffs' contract rights in law or in fact due to the prior litigation of this issue on similar grounds, where defendants where a party represented by competent counsel in the same. *See Harvey J. Rosen, Joseph B. Rosen and Rebecca Nurick v. The University of South Carolina and The University of South Carolina Gamecock Club*, Op. No. 2011-UP-331 (S.C.CT.APP. filed June 27, 2011) (unpublished order of the South Carolina Court of Appeals (attached hereto)).

This motion is made pursuant to the South Carolina Rules of Civil Procedure, the pleadings, and all applicable statutory law and common law. This motion is made in good faith, supported here by the Affidavit of George Lee (attached hereto), supporting memoranda of law (attached hereto), and any memoranda or affidavits which they may file with the Court in support of this Motion or any arguments they may advance at any hearing.

[Signature Block on Next Page]

J. LEWIS CROMER & ASSOCIATES, LLC

BY: J. Lewis Cromer

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Attorneys for Plaintiff

August 29, 2012,
Columbia, South Carolina

MEMORANDUM IN SUPPORT

OF SUMMARY JUDGMENT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	IN THE FIFTH JUDICIAL CIRCUIT
Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner and John Love	)	Civil Action No. 2012-CP-40-3924
Plaintiffs,	)	
vs.	)	
The University of South Carolina and The University of South Carolina Gamecock Club,	)	
Defendants.	)	

RICHLAND COUNTY
FILED
2012 AUG 29 PM 4:41
JEANETTE W. McBRIDE
C.C.P. & G.S.

MEMORANDUM IN SUPPORT OF THE PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

The plaintiffs, Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner and John Love, do hereby submit their Memorandum in Support of Plaintiffs' Motion for Summary Judgment. This Court should grant summary judgment against the defendants, The University of South Carolina ("University") and The University of South Carolina Gamecock Club ("Gamecock Club"), as to the plaintiffs' sole cause of action for Breach of Contract on the following grounds.

STATEMENT OF THE FACTS

The plaintiffs each entered into seperate valid contractual agreements with the defendants guaranteeing each respective plaintiff "Assigned Reserved Parking" for University football games along with other benefits. (*See e.g.* Lee contract, Hope/Gardiner contract & Exhibit A thereto). Plaintiffs and/or their predecessors in interest each made payments to the Gamecock

Club in exchange for their Lifetime Scholarship/Silver Spur Memberships in the Gamecock Club and for the right to pass the memberships to a beneficiary.[1] *Id.*

Plaintiffs' contracts were honored, collectively for decades, until the summer of 2012. (Affidavit of George Lee ¶ 5). Exhibit A of the plaintiffs' contracts with the Gamecock Club stated that among other benefits, each Lifetime Full Scholarship member and Lifetime Scholarship (Silver Spur) member would receive "assigned reserved parking." (Exhibit A to the Lee Contract & Hope/Gardiner Contract). Pursuant to their contracts plaintiffs were given priority in parking assignments ahead of non-lifetime donors. (Affidavit of George Lee ¶¶ 5-6). However, through actions taken by the defendants this year, the plaintiffs' priority in parking was rescinded by the defendants and several hundred non-lifetime donors have been given priority ahead of each plaintiff. (*Id.* ¶¶ 6-7).

The aforementioned actions of the defendants amounted to a breach of the plaintiffs' respective contracts for the following reasons of law.

STANDARD OF REVIEW

Summary judgment is appropriate where the pleadings and evidence "together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgement as a matter of law." *Englert, Inc. v. LeafGaurd USA, Inc.*, 377 S.C. 129, 134, 659 S.E. 2d 496, 498 (S.C. 2008) (quoting Rule 56(c), SCRCP).

[1] Plaintiff George M. Lee, III is a lifetime full scholarship member of the Gamecock Club and provided consideration of a $100,000 life insurance policy for the benefit of the defendants; meanwhile, the other plaintiffs are Lifetime Scholarship Silver Spur members of the Gamecock Club they, or their predecessors in interest, made contributions of $25,000 as consideration.

ARGUMENT

A. Valid Contracts Exist Between the Plaintiffs and the Defendants

The plaintiffs' contracts with the defendants were valid under South Carolina law. "In South Carolina, the formation of a contract is governed by well settled principles." *Carolina Amusement Co. v. Conn. Nat'l Life Ins. Co.*, 313 S.C. 215, 220, 437 S.E.2d 122, 125-126 (S.C. Ct. App. 1993). "[A] contract exists where there is an agreement between two or more persons upon sufficient consideration of either to do or not to do a particular act." *Id.* (quoting *Benya v. Gamble*, 282 S.C. 624, 628, 321 S.E.2d 57, 50 (S.C. Ct. App. 1984)). Therefore, "there must be an offer and an acceptance accompanied by valuable consideration." *Id.* A valid offer "is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." *Id.* (quoting Rest. 2d of Contracts § 24 (1981). Such an offer "identifies the bargained for exchange and creates a power of acceptance in the offeree." *Id.* The plaintiffs' contracts with the defendant were valid and their rights under the contracts were given to them in exchange for valuable consideration. (*See*, Lee contract & Hope/Gardiner contract).

B. The Defendants Breached the Contracts

The plaintiffs' contractual rights included "assigned reserved parking." (See Exhibit A to the Lee contract & Hope/Gardiner contract). By undermining the plaintiffs' priority in parking the defendants have breached their contracts with the plaintiffs. (Affidavit of George Lee). Any ambiguity in the statement "assigned reserved parking" should be construed against the defendant drafters of the contracts. *Myrtle Beach Lumber Co. v. Willoughby*, 274 S.E.2d 423, 426 (S.C. 1981) (stating that, "an ambiguity in a written contract should be construed most strongly against the drafters").

Furthermore, the defendants' course of dealing with the plaintiffs sheds light on the parties' intent as to the term "assigned reserved parking". Course of dealing evidence, here, is admissible parol evidence to overcome any deficiency in the language of the contracts between the plaintiffs and defendants. *See, Penton v. J.F. Cleckley & Co.*, 326 S.C. 275, 281, 486 S.E.2d 742, 745 (S.C. 1997); *Lindsay v. Lindsay*, 328 S.C. 329, 343, 491 S.E.2d 742, 745 (1997); *Ebert v. Ebert*, 320 S.C. 331, 339, 465 S.E.2d 121, 126 (S.C. Ct. App. 1995); and *U.S. Leasing Corp. v. Janicare, Inc.*, 294 S.C. 312, 318, 364 S.E.2d 2023, 205 (S.C. Ct. App. 1988). The course of dealing pursuant to these contracts over the past few decades clearly demonstrates that what was meant by "assigned reserved parking" was the priority in parking selection that the plaintiff's enjoyed every football season until present. (Affidavit of George Lee). Reducing the plaintiffs' priority amounts to a breach the contracts.

C. The Defendants are Equitably Estopped

"Courts have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible." *Ex Parte* Dible, 279 S.C. 592, 595-96, 310 S.E.2d 440, 442 (S.C. Ct. App. 1983). Assuming *arguendo* that there was no valid contract or a clear breach of the same, the defendants are equitably estopped, by their conduct, from disclaiming liability for their actions. Where a party exercises "(1) conduct which amounts to a false representation, or conduct calculated to convey the impression that the facts are otherwise, (2) the intention that such conduct shall be acted upon by the other party, and (3) knowledge of the facts" they may be estopped from arguing in contravention of their actions, intention and knowledge. *Provident Life & Accident Ins. Co. v. Driver*, 317 S.C. 471, 477, 451 S.E.2d 924, 928 (S.C. Ct. App. 1994). To assert equitable estoppel that party must show "(1) a lack of knowledge or the means of knowledge of truth as to facts in question, (2) justifiable reliance

upon the conduct of the party estopped; and (3) prejudicial change in the position of the party claiming estoppel. *Walton v. Walton*, 282 S.C. 165, 168, 318 S.E.2d 14, 16 (1984).

Here the defendants, in contracting with the plaintiffs and through years of conduct in accord with such contracts, conveyed to the plaintiffs that they were entitled to higher priority in parking than non-lifetime donors. (Affidavit of George Lee). The plaintiffs reasonably relied on the defendants' actions and changed their positions accordingly by becoming lifetime donors. *Id.* After years of relying on the defendants' assurances, contractual and otherwise, the plaintiffs have been harmed by the defendants' sudden unilateral change in policy. *Id.* The defendants had knowledge of the plaintiffs' reliance on the defendants' actions and the plaintiffs' understanding of the contractual arrangement; therefore, the defendants should be estopped from claiming otherwise.

D. The Defendants are Collaterally Estopped

The defendants defended previous litigation concerning identical contracts to the contracts at issue here. *Harvey J. Rosen, Joseph B. Rosen and Rebecca Nurick v. The University of South Carolina and The University of South Carolina Gamecock Club*, Op. No. 2011-UP-331 (S.C.CT.APP. filed June 27, 2011). There, the Court of Appeals held that the lifetime donor contracts were ambiguous as to the term "assigned and reserved" and that the defendants' course of dealing was admissible parol evidence to shed light on the intention of that term. *Id.* Therefore, to the extent the defendants assert a position contrary to the Court of Appeals holding in that case they are collaterally estopped from doing so. *See Aaron v. Mahl*, 381 S.C. 585, 592, 674 S.E.2d 482, 486 (S.C. 2009) ("Collateral estoppel prevents a party from re-litigating an issue in a subsequent suit which was actually and necessarily litigated and determined in a prior action.").

CONCLUSION

For the above reasons, The Plaintiffs' Motion for Summary Judgment as to the Defendants' liability for breach of contract should be granted and the Plaintiffs are entitled to the relief that they have requested.

Respectfully Submitted,

J. LEWIS CROMER & ASSOCIATES, LLC

BY: _____

J. Lewis Cromer (#1470)
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Attorneys for Plaintiff

August 29, 2012,
Columbia, South Carolina

SWORN AFFIDAVIT

OF GEORGE M. LEE, III

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND)	IN THE FIFTH JUDICIAL CIRCUIT
Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner and John Love)	Civil Action No. 2012-CP040-3924
Plaintiffs,)	
vs.)	**SWORN AFFIDAVIT OF GEORGE LEE**
The University of South Carolina and The University of South Carolina Gamecock Club,)	
Defendants.)	

RICHLAND COUNTY
FILED
2012 AUG 29 PM 4:40
JEANETTE W. McBRIDE
C.C.P. & G.S.

I HEREBY SWEAR AND AFFIRM UNDER PENALTY OF PERJURY THAT THE FOLLOWING IS TRUE AND CORRECT TO THE BEST OF MY RECOLLECTION:

1. I, George M. Lee, III, am a competent adult and can testify truthfully.
2. I hereby testify of my own knowledge.
3. On May 9, 1990, I entered into a contract with the defendants whereby I was guaranteed assigned and reserved parking in consideration for becoming a lifetime full scholarship member in the University of South Carolina Gamecock Club ("Gamecock Club").
4. As valued consideration for the same, I contributed $100,000 life insurance policy to the Gamecock Club and made all required payments as per the contract.
5. Since entering the contract, I was given priority parking (spot number 314) and had use of such priority up until the summer of 2012, as guaranteed by my contract with the Gamecock Club.
6. Through the Gamecock Club's actions persons have been given priority ahead of mine and in contravention of my contract rights.

7. I feel such actions on the part of the University of South Carolina through the University's Gamecock Club violate my rights under the contract and disregards the Gamecock Club's past course of dealing, over decades, regarding the assignment of reserved parking.

George M. Lee, III

SWORN to before me this

29th day of Auguest 2019

Notary Public for South Carolina

My Commission Expires September 9, 2021

HARVEY J. ROSEN ET. AL.

v.

THE UNIVERSITY OF SOUTH CAROLINA ET. AL.

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Harvey J. Rosen, Joseph B. Rosen and Rebecca Nurick, Appellants,

v.

The University of South Carolina and The University of South Carolina Gamecock Club, Respondents.

Appeal From Richland County
Joseph M. Strickland, Circuit Court Judge

Unpublished Opinion No. 2011-UP-331
Heard February 9, 2011 – Filed June 27, 2011

REVERSED AND REMANDED

J. Lewis Cromer and Julius W. Babb, IV, of Columbia, for Appellants.

William H. Davidson, II, and Andrew F. Lindemann, of Columbia, for Respondents.

HUFF, J.: Harvey J. Rosen, Joseph B. Rosen, and Rebecca Nurick (collectively, Rosens) appeal the trial court's order granting summary judgment to the University of South Carolina and the University of South Carolina Gamecock Club (collectively, the University) on the Rosens' claims for breach of contract and constitutional taking. We reverse and remand.

FACTS/PROCEDURAL HISTORY

The Rosens donated approximately $140,000 in money and property to the University and, in exchange, became Lifetime Silver Spur Scholarship members in the Gamecock Club. In 1987, the parties executed contracts memorializing the terms of the agreement. Exhibit A to the contracts listed the benefits and priorities the Rosens received. The exhibit provided:

> LIFETIME FULL SCHOLARSHIP
>
> --Four Season Football Tickets (Best Available)
> --Additional Four Season Football Tickets (Total of 8)
> --Assigned Reserved Parking
> --Second Priority on Away and Bowl Game Tickets
> --Tickets May Be Assigned to One Designated Heir
> --Four Season Basketball Tickets (Best Available)
> --Assigned Parking at the Coliseum (If Available)
> --Second Priority on Away and Tournament Game Tickets
> --Second Priority on any Tickets Involving any other South Carolina Athletic Events

In the contracts, each of the Rosens designated a beneficiary to receive the lifetime membership upon the Rosens' deaths. This designation provided: "Upon the death of [], this Lifetime Silver Spur membership will be transferred to [] for his lifetime only."

In 2007, the University initiated a fee for the assigned reserved parking at the football stadium for the Gamecock Club donors. Until that time, the Rosens had not paid for parking. However, they had paid for the athletic event tickets.

The Rosens brought this action against the University originally asserting causes of action for breach of contract, conversion, and violation of the South Carolina Unfair Trade Practices Act (UTPA)[1]. They amended their complaint to add a claim for a constitutional taking. The University denied their claims. Both sides moved for summary judgment.

The trial court found all of the issues were subsumed in the breach of contract issue.[2] It held the contracts between the University and the Rosens were not ambiguous and contained no language that the privileges were "free" or signified any value was assigned to the privileges. It noted the Rosens had paid for the football tickets over the years, including the increases in the price of the tickets. It found that lifetime donors, such as the Rosens, only received the benefit of maintaining their donor level in the Gamecock Club, regardless of any increase in dues, without ever having to contribute yearly dues in the future. The trial court granted the University's motion for summary judgment. The Rosens filed a motion to alter or amend, which the trial court denied. This appeal followed.

STANDARD OF REVIEW

This court reviews the grant of a motion for summary judgment applying the same standard that governs the trial court. Wogan v. Kunze, 379 S.C. 581, 585, 666 S.E.2d 901, 903 (2008). Summary judgment is proper where no genuine issue exists as to any material fact and the moving party is entitled to judgment as a matter of law. Id.; Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the evidence and all reasonable inferences that can be drawn from the evidence must be viewed in the light most favorable to the non-moving party. Law v. S.C. Dep't of Corr.,

[1] S.C. Code Ann. §§ 39–5–10 to –560 (1985 & Supp. 2010).

[2] The Rosens abandoned their UTPA claim at the hearing.

368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006). "Even when there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." Wilson v. Style Crest Prods., Inc., 367 S.C. 653, 656, 627 S.E.2d 733, 735 (2006). "[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

LAW/ANALYSIS

The Rosens argue the trial court erred in finding the language of the contracts to be unambiguous.

"It is a question of law for the court whether the language of a contract is ambiguous." S.C. Dep't of Natural Res. v. Town of McClellanville, 345 S.C. 617, 623, 550 S.E.2d 299, 302-03 (2001). "Whether a contract is ambiguous is to be determined from the entire contract and not from isolated portions of the contract." Farr v. Duke Power Co., 265 S.C. 356, 362, 218 S.E.2d 431, 433 (1975).

> A contract is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages, and terminology as generally understood in the particular trade or business.

Hawkins v. Greenwood Dev. Corp., 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct. App. 1997) (quoting 17A Am.Jur.2d Contracts § 338, at 345 (1991)). Construction of an ambiguous contract is a question of fact. Skull Creek Club Ltd. P'ship v. Cook & Book, Inc., 313 S.C. 283, 286, 437 S.E.2d 163, 165 (Ct. App. 1993).

At oral argument, the University urged this court to consider that the Rosens paid for football tickets, including the increases in football ticket

the written agreement but to determine the intent of the parties as to that particular matter. Id.

In the present case, the contracts did not specifically prohibit or allow a change of the designated beneficiary. It is impossible from the plain language of the contracts to determine if the parties intended to allow the change. Thus, we find this provision is also ambiguous.

We hold the trial court erred in holding the contracts were not ambiguous. Accordingly, the trial court's order granting summary judgment in favor of the University is

REVERSED AND REMANDED.[3]

SHORT, J., concurs. PIEPER, J., concurring in part and dissenting in part in a separate opinion.

PIEPER, J., concurring in part and dissenting in part: I agree with the majority decision to reverse and remand as to the parking issue. However, I respectfully dissent as to the beneficiary issue and would affirm the trial court's determination that the contracts are unambiguous as to this issue and do not allow a change of beneficiary.

In regard to the beneficiary provisions, the contracts provided only as follows: "Upon the death of [], this Lifetime Silver Spur membership will be transferred to [] for his lifetime only." As noted in the majority opinion, the contracts do not expressly permit or prohibit a change in beneficiaries.

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[3] Because of our disposition of this issue, we decline to address the Rosens' remaining issues and the University's arguments purporting to be additional sustaining grounds. See I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000) (holding it is within the appellate court's discretion whether to address any of respondent's additional sustaining grounds); Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating that if an appellate court's ruling on a particular issue is dispositive of an appeal, rulings on remaining issues are unnecessary).

However, silence in the contracts regarding the ability to change beneficiaries does not necessarily render the contracts ambiguous. See Jordan v. Sec. Group, Inc., 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993) (holding silence alone does not create an ambiguity). Rather, the contracts are ambiguous only if the absence of language as to whether the Rosens may change beneficiaries renders the agreements reasonably susceptible to more than one interpretation. See Abu-Shawareb v. S.C. State Univ., 364 S.C. 358, 363, 613 S.E.2d 757, 760 (Ct. App. 2005) (holding an ambiguity arises only when a contract is either inconsistent on its face or reasonably susceptible to more than one interpretation); see also McNair v. United Energy Distribs., 390 S.C. 44, 53-54, 699 S.E.2d 723, 728 (Ct. App. 2010) (holding that where the language of a contract is plain and capable of legal construction, that language alone determines the instrument's force and effect). Looking to the language of the contracts, I find no inconsistencies. Also, I do not find the beneficiary provisions susceptible to more than one interpretation. Therefore, I would affirm the trial court's determination that the contracts are unambiguous in regard to the beneficiary provisions and do not permit the Rosens to change the named beneficiaries.

LEE CONTRACT

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT made this 11th day of March, 1990, by and between George M. Cobb III hereinafter referred to as the "Donor" and the University of South Carolina Gamecock Club, hereinafter referred to as the "Gamecock Club".

WITNESSETH:

FOR AND IN CONSIDERATION of the mutual covenants contained herein, the parties do hereby agree as follows:

1. Donor hereby agrees to irrevocably assign and contribute to the Gamecock Club the face amount of a whole life insurance policy valued at a minimum $100,000 with an A+ top 25 company as rated by the "Best Rating System".

2. It is understood and agreed that the University will be the irrevocable owner and sole beneficiary of the policy and that the policy will be the property of the Gamecock Club. The Donor will not retain any benefits under the policy.

3. Donor agrees to pay the annual premium payments of a sum not less than $1,000 on the above described policy to the Gamecock Club for a period of eight (8) years until the policy is paid up at which time the Gamecock Club will own the paid up policy. At this time, the cash value of the policy will continue to pay the premiums throughout the life of the Donor. The Donor shall provide a copy of the policy to the club and will be responsible for any further premiums that might come due on the policy. The Gamecock Club reserves the right to make payments on the policy should the Donor refuse to do so.

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4. The University of South Carolina Gamecock Club does hereby acknowledge receipt of said insurance policy and agrees that in exchange for this gift and the agreement by Donor to make all premium payments, Donor will be designated as a Lifetime Scholarship Donor for the eight (8) years he/she is paying on the policy with all the privileges and benefits pertaining thereto as set forth in the attached Exhibit A attached hereto and made a part hereof and the terms of which are incorporated herein by reference. In accordance with said attachment, [illegible] will have the opportunity to purchase tickets entitled to the Gamecock Level or membership presently held. There will be no guarantee as to where ticket assignments will be located. Assignments will be made according to membership priority and in accordance with the Gamecock Club By-laws.

5. Upon completion of the eight (8) years, Donor will have an option:

a. Make no further contributions to the Gamecock Club and receive Full Scholarship benefits for the remainder of his/her lifetime. The Donor will revert back to the Full Scholarship inheritance policy of spouse only at this time.

b. Make an annual contribution of $500.00 or more to the Gamecock Club and continue to receive the Lifetime Full Scholarship membership in the Gamecock Club which includes an inheritance of any named heir.

6. In the event the Donor defaults on the payment of the insurance premium to the Gamecock Club, all benefits of the membership including priority in the Gamecock Club to Donor shall be cancelled. In such event, the Gamecock Club shall have the right to cancel the policy or continue to make the premium payments. The Gamecock Club may

also collect and recoup from the Donor the difference between the value of the gift received and of the contribution actually paid.

7. The privileges of this membership will be transferred to [illegible] of [illegible] (Address) upon death of the Donor as long as the Donor remains a Gamecock Club member at the Lifetime Scholarship level. Upon death of the Donor, the family has 90 days to notify the Club and provide a copy of the death certificate. Should the heir of this membership predecease the Donor, the heir of this membership may be re-named.

8. Upon the death of the Donor the proceeds from the insurance policy will be deposited in a Gamecock Club permanent endowment account.

IN WITNESS WHEREOF, George M. Lee III has caused these presents to be duly authorized, and the University of South Carolina Gamecock Club has hereunto set its hand and seal on the date first above written.

DONOR

By: George M. Lee III (L.S.)

Date: 3-9-90

THE UNIVERSITY OF SOUTH CAROLINA

By: [signature] (L.S.)
Mr. Thomas L. Stepp
Sceretary/Board of Trustees

Date: 4/12/191

By: [signature] (L.S.)
A. King Dixon, II
Director of Athletics

Date: 7-9-90

THE UNIVERSITY OF SOUTH CAROLINA
GAMECOCK CLUB

By: Art Baker (L.S.)
Art Baker
Executive Director/Gamecock Club

Date: 6/27/90

8042-A-007

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EXHIBIT A

LIFETIME FULL SCHOLARSHIP

--Four Season Football Tickets (Best Available)
--Additional Four Season Football Tickets (Total of 8)
--Assigned Reserved Parking
--Second Priority on Away and Bowl Game Tickets
--Tickets May Be Assigned to One Designated Heir
--Four Season Basketball Tickets (Best Available)
--Assigned Parking at Coliseum (If Available)
--Second Priority on Away and Tournament Game Tickets
--Second Priority on any Tickets Involving any other South Carolina Athletic Events

8042-B-008

LEE CONTRACT

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT made this 11th day of March, 19[illegible], by and between [illegible] hereinafter referred to as the "Donor" and the University of South Carolina Gamecock Club, hereinafter referred to as the "Gamecock Club".

WITNESSETH:

FOR AND IN CONSIDERATION of the mutual covenants contained herein, the parties do hereby agree as follows:

1. Donor hereby agrees to irrevocably assign and contribute to the Gamecock Club the face amount of a whole life insurance policy valued at a minimum $100,000 with an A+ top 25 company as rated by the "Best Rating System".

2. It is understood and agreed that the University will be the irrevocable owner and sole beneficiary of the policy and that the policy will be the property of the Gamecock Club. The Donor will not retain any benefits under the policy.

3. Donor agrees to pay the annual premium payments of a sum not less than $1,000 on the above described policy to the Gamecock Club for a period of eight (8) years until the policy is paid up at which time the Gamecock Club will own the paid up policy. At this time, the cash value of the policy will continue to pay the premiums throughout the life of the Donor. The Donor shall provide a copy of the policy to the club and will be responsible for any further premiums that might come due on the policy. The Gamecock Club reserves the right to make payments on the policy should the Donor refuse to do so.

4. The University of South Carolina Gamecock Club does hereby acknowledge receipt of said insurance policy and agrees that in exchange for this gift and the agreement by Donor to make all premium payments, Donor will be designated as a Lifetime Scholarship Donor for the eight (8) years he/she is paying on the policy with all the privileges and benefits pertaining thereto as set forth in the attached Exhibit A attached hereto and made a part hereof and the terms of which are incorporated herein by reference. In accordance with said attachment, [illegible] will have the opportunity to purchase tickets entitled to the Gamecock Level or membership presently held. There will be no guarantee as to where ticket assignments will be located. Assignments will be made according to membership priority and in accordance with the Gamecock Club By-laws.

5. Upon completion of the eight (8) years, Donor will have an option:

a. Make no further contributions to the Gamecock Club and receive Full Scholarship benefits for the remainder of his/her lifetime. The Donor will revert back to the Full Scholarship inheritance policy of spouse only at this time.

b. Make an annual contribution of $500.00 or more to the Gamecock Club and continue to receive the Lifetime Full Scholarship membership in the Gamecock Club which includes an inheritance of any named heir.

6. In the event the Donor defaults on the payment of the insurance premium to the Gamecock Club, all benefits of the membership including priority in the Gamecock Club to Donor shall be cancelled. In such event, the Gamecock Club shall have the right to cancel the policy or continue to make the premium payments. The Gamecock Club may

also collect and recoup from the Donor the difference between the value of the gift received and of the contribution actually paid.

7. The privileges of this membership will be transferred to [illegible] of [illegible] (Address) upon death of the Donor as long as the Donor remains a Gamecock Club member at the Lifetime Scholarship level. Upon death of the Donor, the family has 90 days to notify the Club and provide a copy of the death certificate. Should the heir of this membership predecease the Donor, the heir of this membership may be re-named.

8. Upon the death of the Donor the proceeds from the insurance policy will be deposited in a Gamecock Club permanent endowment account.

IN WITNESS WHEREOF, George M. Lee III has caused these presents to be duly authorized, and the University of South Carolina Gamecock Club has hereunto set its hand and seal on the date first above written.

DONOR

By: George M. Lee III (L.S.)

Date: 3-9-90

THE UNIVERSITY OF SOUTH CAROLINA

By: [signature] (L.S.)
Mr. Thomas L. Stepp
Sceretary/Board of Trustees

Date: 4/12/91

By: [signature] (L.S.)
A. King Dixon, II
Director of Athletics

Date: 7-9-90

THE UNIVERSITY OF SOUTH CAROLINA
GAMECOCK CLUB

By: Art Baker (L.S.)
Art Baker
Executive Director/Gamecock Club

Date: 6/27/90

8042-A-007

000179

EXHIBIT A

LIFETIME FULL SCHOLARSHIP

--Four Season Football Tickets (Best Available)
--Additional Four Season Football Tickets (Total of 8)
--Assigned Reserved Parking
--Second Priority on Away and Bowl Game Tickets
--Tickets May Be Assigned to One Designated Heir
--Four Season Basketball Tickets (Best Available)
--Assigned Parking at Coliseum (If Available)
--Second Priority on Away and Tournament Game Tickets
--Second Priority on any Tickets Involving any other South Carolina Athletic Events

8042-B-008

HOPE/GARDINER CONTRACT

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT made this 8th day of MAY, 1986, by and between STUART C HOPE, hereinafter referred to as the "Donor" and the University of South Carolina Gamecock Club, hereinafter referred to as the "Gamecock Club,"

WITNESSETH:

1. Stuart C. Hope has contributed Five Thousand and No/100 Dollars ($5,000) to the University of South Carolina Gamecock Club.

2. Stuart C. Hope has agreed to contribute the additional sum of Twenty Thousand and No/100 Dollars ($20,000) payable in annual installments of Five Thousand and No/100 Dollars ($5,000) beginning in 1987 and ending in 1990 for the privilege of being a Lifetime Scholarship Member of the Gamecock Club with all the benefits appertaining thereto.

3. The University of South Carolina Gamecock Club hereby acknowledges receipt of Five Thousand and No/100 Dollars ($5,000) and agrees that in exchange for the receipt of Five Thousand and No/100 Dollars ($5,000) and the pledge of the additional Twenty Thousand and No/100 Dollars ($20,000) Stuart C. Hope will be designated as a Lifetime Scholarship Donor with all the privileges and benefits pertaining thereto as set forth in the attached Exhibit A attached hereto and made a part hereof and the terms of which are incorporated herein by reference. In accordance with said attachment, Stuart C. Hope will have the opportunity to purchase EIGHT (8) football tickets and four (4) basketball tickets. It is understood and agreed that in the event of death of the beneficiary during the lifetime of the Donor, Donor may change the beneficiary by written amended agreement with the University.

4. The Gamecock Club agrees that the privileges and benefits of this membership will be transferred to MENA HOPE GARDINER (name), COLUMBIA, SC (address), upon the death of Stuart C. Hope.

5. All funds contributed by Stuart C. Hope under the terms of this agreement shall be deposited in a University permanent endowment account of which only the income derived therefrom may be spent as determined by the USC Gamecock Club.

IN WITNESS WHEREOF Stuart C. Hope has caused these presents to be duly authorized, and the University of South Carolina Gamecock Club has hereunto set its hand and seal on the date first above written.

DONOR

By: _____ (L.S.)
Stuart C. Hope
248-40-5850

Date: _____

THE UNIVERSITY OF SOUTH CAROLINA

By: _____ (L.S.)
J. Steven Beckham
Chief Executive Assistant
to the President

Date: 5/28/86

THE UNIVERSITY OF SOUTH CAROLINA
GAMECOCK CLUB

By: _____ (L.S.)
Chip Clary
Director, Gamecock Club

Date: 4-25-86

EXHIBIT A

LIFETIME SCHOLARSHIP

$25,000-$40,000 (may be pro-rated over a 5 year period)

--Four Season Football Tickets (Best Available).
--Additional Four Season Football Tickets (Total of 8).
--Assigned Reserved Parking.
--Second Priority on Away and Bowl Game Tickets.
--Tickets May Be Assigned to One Designated Heir.
--Four Season Basketball Tickets (Best Available).
--Assigned Reserved Parking at Coliseum (If Available).
--Second Priority on Away and Tournament Game Tickets.
--Second Priority on Any Tickets Involving Any Other South Carolina Athletic Events.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner, and John Love,
[ ] Plaintiffs,

vs.

The University of South Carolina and The University of South Carolina Gamecock Club,
[X] Defendants.
Check box above indicating submitting party

IN THE [X] COURT OF COMMON PLEAS
[ ] FAMILY COURT
Civil Action No. 2012-CP-40-3924

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

name, SC Bar no. and address of plaintiff's attorney	name, SC Bar no. and address of defendant's attorney
J. Lewis Cromer, Esquire Lewis Cromer & Associates, LLC 1522 Lady Street Post Office Box 11675 Columbia, South Carolina 29211 Telephone: 803-799-9530 Facsimile: 803-884-3595 Email: jlc@jlewiscromerlaw.com	Robert E. Stepp, Esquire (SC Bar 5335) Bess J. DuRant (SC Bar 77920) Sowell Gray Stepp & Laffitte, LLC Post Office Box 11449 Columbia, South Carolina 29211 Telephone: 803-929-1400 Facsimile: 803-929-0300 rstepp@sowellgray.com

[X] MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
[ ] FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
[ ] PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Dismiss
Estimated Time Needed: 30 minutes Court Reporter Needed: YES [X] NO [ ]

SECTION II: Motion Type

[ ] Written motion attached
[ ] Form Motion:
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for [ ] Plaintiff [ ] Defendant Date Submitted

SECTION III: Motion Fee

[X] PAID – AMOUNT: $25.00
[ ] EXEMPT: [ ] Rule to Show Cause in Child or Spousal Support
[ ] Domestic Abuse or Abuse and Neglect
(check reason) [ ] Indigent Status [ ] State Agency v. Indigent Party
[ ] Sexually Violent Predator Act [ ] Post Conviction Relief
[ ] Motion for Stay in Bankruptcy
[ ] Motion for Publication [ ] Motion for Execution (Rule 69, SCRCP)
[ ] Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
[ ] Other:

JUDGE'S SECTION

[ ] Motion Fee to be paid upon filing of the attached order.
[ ] Other:

JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

DATE FILED

Collected by: _____
(print name)

[ ] MOTION FEE COLLECTED: _____
[ ] CONTESTED – AMOUNT DUE: _____

SCCA/233 (1/2003)

000185

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	IN THE FIFTH JUDICIAL CIRCUIT
Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner, and John Love,	)	Civil Action No. 2012-CP-40-3924
Plaintiffs,	)	**MOTION TO DISMISS**
vs.	)	
The University of South Carolina and The University of South Carolina Gamecock Club,	)	
Defendants.	)	

Pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, Defendants the University of South Carolina ("USC") and the University of South Carolina Gamecock Club ("Gamecock Club") move to dismiss Plaintiffs' Amended Complaint because Plaintiffs have failed to allege a breach of contract or interference with their contractual rights. As a matter of law, Plaintiffs are not entitled to any specific parking space at USC football games because their respective contracts with the Gamecock Club only provide that they may enjoy "assigned reserved parking." Because Plaintiffs have failed to allege that Defendants breached a contract or interfered with any alleged contractual rights, Plaintiffs' Amended Complaint should be dismissed.

In Plaintiffs' Amended Complaint, the sole remedy sought by Plaintiffs is "an order from the Court pendente lite and permanently enjoining and restraining the defendant from interfering with the contractual rights of the life members of the Gamecock Club, particularly the rights of such members to have the highest priority for parking within locations at or near Williams Brice

Stadium and to determine that priority within the class of life members themselves." (Am. Compl. p.5) Specifically, Plaintiffs allege that as "life members" of the Gamecock Club, they are entitled to "assigned reserved parking at or near the stadium for football games." (*Id.* ¶¶ 1,9.) To support this claim, Plaintiffs purported to attach to their Amended Complaint a list of terms regarding a Lifetime Full Scholarship as Exhibit A.[1] Regarding parking, the list of terms only provides that Lifetime Full Scholarship members may enjoy "assigned reserved parking." Exhibit A makes no mention of guaranteed parking in specific spaces at or near the stadium.

Plaintiffs allege that the implementation of a "new priority plan" will deprive them of their "priority in the selection of parking spaces around Williams Brice Stadium and will be 'bumped down' in priority for lesser attractive, more distant parking locations . . . ." (*Id.* ¶ 12.) Plaintiffs allege that Defendants have breached their written agreements with Plaintiffs "by not providing them appropriate priority in the selection of assigned and designated parking spaces at or near Williams Brice Stadium." (*Id.* ¶ 14.)

Plaintiffs' Amended Complaint therefore fails to state facts sufficient to constitute a cause of action against Defendants because Defendants have not breached any contracts with Plaintiffs or interfered with any contractual rights of Plaintiffs. As noted in Exhibit A, Lifetime Full Scholarship members may enjoy "assigned reserved parking." Exhibit A does not commit Defendants to provide specific parking spaces in perpetuity or state that Lifetime Full Scholarship members will have any particular priority in the selection of parking spaces. Consequently, the Amended Complaint fails to state facts sufficient to support a cause of action against Defendants, and therefore, Plaintiffs' Amended Complaint should be dismissed.

---

[1] Although the Amended Complaint refers to Exhibit A, Plaintiffs inadvertently failed to attach it to their Amended Complaint. The same document was attached to their original Complaint, however, and therefore its contents are known and may be considered by the Court in connection with this motion. A copy of Exhibit A is attached hereto for the Court's review.

This motion is based upon the Complaint and Amended Complaint and such other and further materials as may be submitted prior to any hearing on this motion. Pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, there is no duty to consult on this motion to dismiss.

SOWELL GRAY STEPP & LAFFITTE, LLC

By: _____

Robert E. Stepp
Bess J. DuRant
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Defendants The University of South Carolina and The University of South Carolina Gamecock Club

Columbia, South Carolina
July 24, 2012

EXHIBIT A

LIFETIME FULL SCHOLARSHIP

--Four Season Football Tickets (Best Available)
--Additional Four Season Football Tickets (Total of 8)
--Assigned Reserved Parking
--Second Priority on Away and Bowl Game Tickets
--Tickets May Be Assigned to One Designated Heir
--Four Season Basketball Tickets (Best Available)
--Assigned Parking at Coliseum (If Available)
--Second Priority on Away and Tournament Game Tickets
--Second Priority on any Tickets Involving any other South Carolina Athletic Events.

8042-31-013

000189

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	IN THE FIFTH JUDICIAL CIRCUIT
Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner, and John Love,	)	Civil Action No. 2012-CP-40-3924
Plaintiffs,	)	
	)	**CERTIFICATE OF SERVICE**
vs.	)	
The University of South Carolina and The University of South Carolina Gamecock Club,	)	
Defendants.	)	

I, the undersigned paralegal of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for Defendants The University of South Carolina and The University of South Carolina Gamecock Club, do hereby certify that I have served all counsel in this action with a copy of the document specified below by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Document: Motion to Dismiss

Counsel Served: J. Lewis Cromer, Esquire
Tandi D. Ross, Esquire
Julius W. Babb, IV, Esquire
Lewis Cromer & Associates, LLC
1522 Lady Street
Post Office Box 11675
Columbia, South Carolina 29211
Attorneys for Plaintiffs

Kimberly Woodworth

July 24, 2012
Columbia, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

Case No.: 2012-CP-40-3924

Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner and John Love

Plaintiffs,

vs.

The University of South Carolina and The University of South Carolina Gamecock Club,

Defendants.

AMENDED SUMMONS

RICHLAND COUNTY
FILED
2012 JUL -6 PM 3:13
JEANETTE W. McBRIDE
C.C.P. & G.S.

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint herein, a copy of which is served upon you, and to serve a copy of your answer to this Amended Complaint upon the subscriber at the address shown below within thirty (30) days (thirty five (35) days if served by United States Mail) after service hereof, exclusive of the date of such service, and if you fail to answer the Amended Complaint, judgment by default will be rendered against you for the relief demanded in the Amended Complaint.

J. LEWIS CROMER & ASSOCIATES, L.L.C.

BY: J. Lewis Cromer

J. Lewis Cromer (#1470)
Tandi R. Card (#76623)
Julius W. Babb, IV (#77216)
1522 Lady Street
Post Office Box 11675
Columbia, South Carolina 29211
Phone 803-799-9530
Fax 803-799-9533
Attorneys for Plaintiff

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)

Case No.: 2012-CP-40-3924

Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner and John Love

Plaintiffs,

vs.

The University of South Carolina and The University of South Carolina Gamecock Club,

Defendants.

AMENDED COMPLAINT
(Non-Jury)

JEANETTE W. McBRIDE
C.C.P. & G.S.
2012 JUL -6 PM 3:13
RICHLAND COUNTY
FILED

The plaintiffs, complaining of the defendants herein, would respectfully allege as follows:

1. The plaintiffs Linda Rodarte (Rodarte), George M. Lee, III (Lee) and Mena H. Gardiner (Gardiner) are residents of Richland County, South Carolina. The plaintiff J. Perry Kimball (Kimball) is a resident of Lexington County, South Carolina and the plaintiff John Love (Love) is a resident of Alamance County, North Carolina. The plaintiffs are collectively referred to herein as "life members" of the Gamecock Club.

2. The University of South Carolina ("USC") is a state university and an agency of the State of South Carolina with its principal campus and offices in Richland County, South Carolina. The University of South Carolina Gamecock Club ("Gamecock Club") is an unincorporated non-profit association with its offices and officers in Richland County, South Carolina, although its identity is blurred because of interlocking directorates and individuals in charge also employed and acting in or on behalf of the athletic department of USC.

3. The USC athletic department sells tickets and promotes events in which USC athletic teams are involved and regulates the prices and sale of tickets and other incidental activities, including the assigning of parking spaces for those who attend University athletic events, which raise money for USC generally or for its athletic programs.

4. The Gamecock Club is an organization which boosts and promotes USC athletics and with whom USC has partnered in the promotion of its programs and in the awarding of privileges in attendance at athletic events on USC property based upon financial contributions made by supporters of athletics.

5. In the assignment of such benefits, i.e., choice seating for athletic events, parking, and provision of special amenities, the Gamecock Club with the knowledge, approval and support of USC has established and maintained for several decades different levels and methods of giving which provide different levels of privileges relating to the above accommodations for athletic events.

6. Many levels of giving are obtained by supporters on an annual or seasonal basis and must be renewed from year to year in order to maintain such privileges or move to another class or level where the benefits are greater or lesser, based on the amount of the supporter's years of giving and contribution. At the highest levels, a lump sum one time gift, whether by cash, property or the purchase of a life insurance policy with the University as beneficiary results in lifetime right of the patron to the specified benefits given. Both USC and the Gamecock Club have historically honored such agreements.

7. Over the many years of the Gamecock Club's existence, while ticket prices may have changed, USC and the Gamecock Club, upon information and belief, have always honored their

commitments to supporters whether yearly or lifetime contracts. Life members are at the top of all Gamecock Club priority for all benefits.

8. For more than 2 decades, the plaintiff life members made financial commitments and purchased life insurance for the benefit of USC which, among other things, gave the plaintiffs membership in good standing with the Gamecock Club at the level of "lifetime Silver Spur or Full Scholarship members." The Gamecock Club participated in, acknowledged and fully complied with USC's contracts with all of the lifetime members including the plaintiffs. There are approximately 230 life members who have been assigned priority among themselves based upon "priority points" established for each life member's contribution and consecutive years of giving by the life members. All other Gamecock Club members are within the general membership which has its own priority rules.

9. Such lifetime status provided among other things that as long as the plaintiffs were members of the Gamecock Club they would receive assigned reserved parking at or near the stadium for football games. USC and the Gamecock Club assigned them designated spaces which they have continued to use. See Exhibit A attached.

10. Said agreements also provided that any of the plaintiffs could pass their membership and all benefits and all points to a designated beneficiary whose rights and privileges would survive the death of the plaintiff involved. The defendant Gardiner is the designated beneficiary of Stuart C. Hope deceased, a life member.

11. For every year since they have been members, the plaintiffs and their predecessors have remained in good standing and have utilized the benefits and privileges which they contracted when they gave USC the required contribution to establish the appropriate endowment funds.

12. Plaintiffs have been advised that they will no longer receive the priority in the selection of parking spaces around Williams Brice Stadium and will be "bumped down" in priority for lesser attractive, more distant parking locations under a new priority plan which no longer allows life members to have highest priority before the priority of other members is considered. The plaintiffs never envisioned that their lifetime contract rights would be curtailed or changed at the time their contribution was made.

13. The plaintiffs have held several meetings with USC athletic officials to protest such action, but such meetings have been nonproductive and the plaintiffs have lost their rights to park in their assigned, reserved spaces, which has especially hurt the older plaintiffs and older or disabled life members who cannot walk long distance without pain and discomfort.

14. The defendants have, in bad faith, breached their written agreements with the plaintiffs in denying them the rights and privileges established by them several decades ago in not providing them appropriate priority in the selection of assigned and designated parking spaces at or near Williams Brice Stadium.

15. Rather, in breach of their contracts and obligations, the defendants have for the last several years denied the life members of their rights as well as their designated beneficiaries to enjoy their own lifetime privileges and also denying the plaintiffs of their rights to select the same particularly in the selection and retention of parking spaces at or near Williams Brice Stadium.

16. Further, not just activities within Williams Brice Stadium are "staged events" but now that the University has assigned large portions of the acreage around the stadium for parking, bands, parades and other game activities take place throughout the parking lots which constitute "athletic events" and make location priority an even more important considerations to life

members, who were promised the highest priority in benefits, including parking locations and attendance of all athletic events.

17. Unless prompt action is taken, the defendant's actions as discussed here will result in irreparable harm to the plaintiffs and other life members.

WHEREFORE, plaintiff prays for an order from the Court pendente lite and permanently enjoining and restraining the defendant from interfering with the contractual rights of the life members of the Gamecock Club, particularly the rights of such members to have the highest priority for parking within locations at or near Williams Brice Stadium and to determine that priority within the class of life members themselves. Plaintiffs further pray for an award of attorney's fees and costs, pendente lite and permanently.

J. LEWIS CROMER & ASSOCIATES, LLC

BY: _____

J. Lewis Cromer (#1470)
Tandi D. Ross (#76623)
Julius W. Babb, IV (#77216)
1522 Lady Street
Post Office Box 11675
Columbia, South Carolina 29211
Phone 803-799-9530
Fax 803-799-9533

Attorneys for Plaintiff

July 6, 2012

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)
) Case No.: 2012-CP-40-3924
Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner and John Love)
)
Plaintiffs,) **Acceptance of Service**
)
vs.)
)
The University of South Carolina and The University of South Carolina Gamecock Club,)
)
Defendants.)

RICHLAND COUNTY
FILED
2012 JUL -9 PM 2:35
JEANETTE W. McBRIDE
C.C.P. & G.S.

I, **Bess Durant, Esquire,** of Sowell, Gray, Stepp and Laffitte, attorneys for the defendants above named, am authorized to and hereby accept service of the Civil Action Coversheet, Amended Summons & Amended Complaint on behalf of The University of South Carolina Gamecock Club on this the 9th day of July, 2012.

Bess Durant, Esquire

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)
)
Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner and John Love) CIVIL ACTION COVERSHEET
Plaintiff(s))
)
vs.) 2012-CP - 40- 3924
)
The University of South Carolina and The University of South Carolina Gamecock Club)
Defendant(s))

(Please Print)
Submitted By: J. Lewis Cromer
Address: 1522 Lady Street Columbia SC 29211

SC Bar #: 1470
Telephone #: 8037999530
Fax #: 8037999533
Other:
E-mail: jlc@jlewiscromer.law.com

FILED
2012 JUL 9 PM 3:13
RICHLAND COUNTY
CLERK OF COURT

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION *(Check all that apply)*

**If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION *(Check One Box Below)*

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☒ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case #: 20____-CP-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Other (799)

Administrative Law/Relief
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☒ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Sexual Predator (510)

Submitting Party Signature: J. Lewis Cromer **Date:** July 6, 2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous

- Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

   a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

   b. Requests for temporary relief;

   c. Appeals

   d. Post Conviction relief matters;

   e. Contempt of Court proceedings;

   f. Forfeiture proceedings brought by governmental entities;

   g. Mortgage foreclosures; and

   h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner and Mitchell Bailey

Plaintiffs,

vs.

The University of South Carolina and The University of South Carolina Gamecock Club,

Defendants.

SUMMONS

2012 JUN -7 PM 4:49

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is served upon you, and to serve a copy of your answer to this Complaint upon the subscriber at the address shown below within thirty (30) days (thirty five (35) days if served by United States Mail) after service hereof, exclusive of the date of such service, and if you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

J. LEWIS CROMER & ASSOCIATES, L.L.C.

BY: _____

J. Lewis Cromer (#1470)
Tandi R. Card (#76623)
Julius W. Babb, IV (#77216)
1522 Lady Street
Post Office Box 11675
Columbia, South Carolina 29211
Phone 803-799-9530
Fax 803-799-9533
Attorneys for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner and Mitchell Bailey

Plaintiffs,

vs.

The University of South Carolina and The University of South Carolina Gamecock Club,

Defendants.

IN THE COURT OF COMMON PLEAS

COMPLAINT
(Non-Jury)

2012 JUN -7 PM 4:49

The plaintiffs, complaining of the defendants herein, would respectfully allege as follows:

1. The plaintiffs Linda Rodarte (Rodarte), George M. Lee III (Lee) and Mena H. Gardiner (Gardiner) are residents of Richland County, South Carolina. The plaintiff J. Perry Kimball (Kimball) is a resident of Lexington County, South Carolina and the plaintiff Mitchell Bailey (Bailey) is a resident of Charleston County, South Carolina. The plaintiffs are collectively referred to herein as "life members" of the Gamecock Club.

2. The University of South Carolina ("USC") is a state university and an agency of the State of South Carolina with its principal campus and offices in Richland County, South Carolina. The University of South Carolina Gamecock Club ("Gamecock Club") is an unincorporated non-profit association with its offices and officers in Richland County, South Carolina, although its identity is blurred because of interlocking directorates and individuals in charge also employed and acting in or on behalf of the athletic department of USC.

3. The USC athletic department sells tickets and promotes events in which USC athletic teams are involved and regulates the prices and sale of tickets and other incidental activities, including the assigning of parking spaces for those who attend University athletic events, which raise money for USC generally or for its athletic programs.

4. The Gamecock Club is an organization which boosts and promotes USC athletics and with whom USC has partnered in the promotion of its programs and in the awarding of privileges in attendance at athletic events on USC property based upon financial contributions made by supporters of athletics.

5. In the assignment of such benefits, i.e., choice seating for athletic events, parking, and provision of special amenities, the Gamecock Club with the knowledge, approval and support of USC has established and maintained for several decades different levels and methods of giving which provide different levels of privileges relating to the above accommodations for athletic events.

6. Many levels of giving are obtained by supporters on an annual or seasonal basis and must be renewed from year to year in order to maintain such privileges or move to another class or level where the benefits are greater or lesser, based on the amount of the supporter's years of giving and contribution. At the highest levels, a lump sum one time gift, whether by cash, property or the purchase of a life insurance policy with the University as beneficiary results in lifetime right of the patron to the specified benefits given. Both USC and the Gamecock Club have historically honored such agreements.

7. Over the many years of the Gamecock Club's existence, while ticket prices may have changed, USC and the Gamecock Club, upon information and belief, have always honored their

commitments to supporters whether yearly or lifetime contracts. Life members are at the top of all Gamecock Club priority for all benefits.

8. For more than 2 decades, the plaintiff life members made financial commitments and purchased life insurance for the benefit of USC which, among other things, gave the plaintiffs membership in good standing with the Gamecock Club at the level of "lifetime Silver Spur or Full Scholarship members." The Gamecock Club participated in, acknowledged and fully complied with USC's contracts with all of the lifetime members including the plaintiffs. There are approximately 230 life members who have been assigned priority among themselves based upon "priority points" established for each life member's contribution and consecutive years of giving by the life members. All other Gamecock Club members are within the general membership which has its own priority rules.

9. Such lifetime status provided among other things that as long as the plaintiffs were members of the Gamecock Club they would receive assigned reserved parking at or near the stadium for football games. USC and the Gamecock Club assigned them designated spaces which they have continued to use. See Exhibit A attached.

10. Said agreements also provided that any of the plaintiffs could pass their membership and all benefits and all points to a designated beneficiary whose rights and privileges would survive the death of the plaintiff involved. The defendant Gardiner is the designated beneficiary of Stuart C. Hope deceased, a life member.

11. For every year since they have been members, the plaintiffs and their predecessors have remained in good standing and have utilized the benefits and privileges which they contracted when they gave USC the required contribution to establish the appropriate endowment funds.

12. Plaintiffs have been advised that they will no longer receive the priority in the selection of parking spaces around Williams Brice Stadium and will be "bumped down" in priority for lesser attractive, more distant parking locations under a new priority plan which no longer allows life members to have highest priority before the priority of other members is considered. The plaintiffs never envisioned that their lifetime contract rights would be curtailed or changed at the time their contribution was made.

13. The plaintiffs have held several meetings with USC athletic officials to protest such action, but such meetings have been nonproductive and the plaintiffs have lost their rights to park in their assigned, reserved spaces, which has especially hurt the older plaintiffs and older or disabled life members who can not walk long distance without pain and discomfort.

14. The defendants have, in bad faith, breached their written agreements with the plaintiffs in denying them the rights and privileges established by them several decades ago in not providing them appropriate priority in the selection of assigned and designated parking spaces at or near Williams Brice Stadium.

15. Rather, in breach of their contracts and obligations, the defendants have for the last several years denied the life members of their rights as well as their designated beneficiaries to enjoy their own lifetime privileges and also denying the plaintiffs of their rights to select the same particularly in the selection and retention of parking spaces at or near Williams Brice Stadium.

16. Further, not just activities within Williams Brice Stadium are "staged events" but now that the University has assigned large portions of the acreage around the stadium for parking, bands, parades and other game activities take place throughout the parking lots which constitute "athletic events" and make location priority an even more important considerations to life

members, who were promised the highest priority in benefits, including parking locations and attendance of all athletic events.

17. Unless prompt action is taken, the defendant's actions as discussed here will result in irreparable harm to the plaintiffs and other life members.

WHEREFORE, plaintiff prays for an order from the Court pendente lite and permanently enjoining and restraining the defendant from interfering with the contractual rights of the life members of the Gamecock Club, particularly the rights of such members to have the highest priority for parking within locations at or near Williams Brice Stadium and to determine that priority within the class of life members themselves. Plaintiffs further pray for an award of attorney's fees and costs, pendente lite and permanently.

LEWIS CROMER & ASSOCIATES, LLC

BY: _____

J. Lewis Cromer (#1470)
Tandi D. Ross (#76623)
Julius W. Babb, IV (#77216
1522 Lady Street
Post Office Box 11675
Columbia, South Carolina 29211
Phone 803-799-9530
Fax 803-799-9533

Attorneys for Plaintiff

June 7, 2012

EXHIBIT A

LIFETIME FULL SCHOLARSHIP

--Four Season Football Tickets (Best Available)
--Additional Four Season Football Tickets (Total of 8)
--Assigned Reserved Parking
--Second Priority on Away and Bowl Game Tickets
--Tickets May Be Assigned to One Designated Heir
--Four Season Basketball Tickets (Best Available)
--Assigned Parking at Coliseum (If Available)
--Second Priority on Away and Tournament Game Tickets
--Second Priority on any Tickets Involving any other South Carolina Athletic Events

8042-B-008

000207

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

David Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner And Mitchell Bailey,

Plaintiff,

v.

The University of South Carolina and The University of South Carolina Gamecock Club,

Defendants,

C/A No:

PLAINTIFF'S VERIFICATION

2012 JUN -7 PM 4:49

JEANNETTE W. [illegible] C.P. & G.S.

I, George M. Lee, III, Plaintiff, being first duly sworn, says that I am one of the plaintiff's in this action and have read the Complaint and that the facts contained in the Complaint are true and correct according to the best of my knowledge, information and belief.

George M. Lee, III

Sworn to and subscribed before me
This 7th day of June, 2012

Notary Public for South Carolina

My Commission Expires My Commission Expires September 9, 2021

000208

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)
)
CIVIL ACTION COVERSHEET

Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner and Mitchell Bailey

Plaintiff(s)

vs.

The University of South Carolina and The University of South Carolina Gamecock Club

Defendant(s)

2012-CP-003924

2012 JUN -7 PM 4:39

(Please Print)
Submitted By: J. Lewis Cromer
Address: 1522 Lady Street Columbia SC 29211

SC Bar #: 1470
Telephone #: 8037999530
Fax #: 8037999533
Other:
E-mail: jlc@jlewiscromerlaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply*)

***If Action is Judgment/Settlement do not complete*

☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☒ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20____-CP-_____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Other (799)

Administrative Law/Relief
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☒ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☒ Other (899) Decl. Judgment

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Sexual Predator (510)

Submitting Party Signature: J. Lewis Cromer **Date:** June 7, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	IN THE FIFTH JUDICIAL CIRCUIT
Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner, and John Love,	)	Civil Action No. 2012-CP-40-3924
Plaintiffs,	)	
vs.	)	**ANSWER**
The University of South Carolina and The University of South Carolina Gamecock Club,	)	
Defendants.	)	

The University of South Carolina ("University") and the University of South Carolina Gamecock Club ("Gamecock Club") hereby answer Plaintiffs' Amended Complaint in this action and deny each and every allegation thereof not hereinafter specifically admitted, qualified, or explained, and further allege as follows:

FOR A FIRST DEFENSE

1. Defendants lack information sufficient to form a belief as to the truth or falsity of the allegations of paragraph one of the Amended Complaint and therefore deny them.

2. Responding to paragraph 2 of the Amended Complaint, Defendants admit that the University is a state university and an agency of the State of South Carolina with its principal campus and offices in Richland County, South Carolina and that the Gamecock Club is a club associated with the University with offices and officers in

Richland County. Defendants deny the remaining allegations of paragraph two of the Amended Complaint.

3. Responding to paragraph 3 of the Amended Complaint, Defendants admit that the University's athletic department sells tickets and promotes events in which University teams are participating and that the University regulates the prices and sale of tickets for these events. Furthermore, Defendants admit that the University's athletic department facilitates in the assigning of parking spaces at University athletic events and that any money raised from the assignment of parking spaces goes to the University. Defendants deny the remaining allegations of paragraph 3 of the Amended Complaint as stated.

4. Responding to paragraph 4 of the Amended Complaint, Defendants admit that the Gamecock Club is a club which boosts and promotes University athletics. Furthermore, Defendants admit that the Gamecock Club works with the University to promote the University's athletic programs and is allowed to allocate certain privileges regarding the University's athletic events based in part upon financial contributions made by supporters of athletics. Defendants deny the remaining allegations of paragraph 4 of the Amended Complaint as stated.

5. Responding to paragraph five of the Amended Complaint, Defendants admit that the Gamecock Club, with the University's knowledge, has established and maintained different levels and methods of giving, which provide different levels of privileges. Defendants deny the remaining allegations of paragraph 5 of the Amended Complaint as stated.

6. Responding to paragraph six of the Amended Complaint, Defendants admit that many levels of giving are obtained by supporters on an annual basis and must be renewed in order to maintain such privileges. Defendants also admit that supporters can move to another level with different benefits and that the benefits can be based on the amount of the supporter's years of giving and contribution. Defendants further admit that at one time, a lump sum one time gift, whether by cash, property, or the purchase of a life insurance policy with the University as beneficiary afforded the supporter the status of either a lifetime full scholarship or silver spur, respectively as long as the member meets all the conditions for membership status. Finally, Defendants admit that such agreements have been honored. Defendants deny the remaining allegations of paragraph six of the Amended Complaint as stated.

7. Responding to paragraph seven of the Amended Complaint, Defendants admit that over the years of the Gamecock Club's existence, ticket prices have changed, and that contracts, whether yearly or lifetime, with supporters have been honored. Defendants deny the remaining allegations of paragraph seven of the Amended Complaint.

8. Responding to paragraph eight of the Amended Complaint, Defendants admit that Plaintiffs have made financial commitments and/or purchased life insurance naming the University as the beneficiary, which gave the Plaintiffs membership in good standing with the Gamecock Club at the level of "lifetime Silver Spur or Full Scholarship members." Defendants also admit that the Gamecock Club participated in, acknowledged, and fully complied with the lifetime membership contracts, including those contracts with Plaintiffs. Finally, Defendants admit that there are approximately

230 lifetime members. Defendants deny the remaining allegations of paragraph eight of the Amended Complaint as stated.

9. Responding to paragraph nine of the Amended Complaint, Defendants admit that as lifetime members, Plaintiffs may enjoy assigned reserved parking and that parking has been reserved for Plaintiffs. Defendants are without knowledge or information sufficient to form a belief as to the truth of whether Plaintiff have used the assigned reserved parking afforded to them, and therefore, deny the allegation. Defendants deny the remaining allegations of paragraph nine of the Amended Complaint.

10. Responding to paragraph ten of the Amended Complaint, Plaintiffs' agreements provide that the privileges of their respective memberships can be transferred to a beneficiary upon the death of the donor as long as the donor remains a Gamecock Club member at the Lifetime Scholarship level. Defendants further admit that Plaintiff Gardiner is the designated beneficiary of Stuart C. Hope. Defendants deny the remaining allegations of paragraph ten of the Amended Complaint as stated.

11. Responding to paragraph eleven of the Amended Complaint, Defendants admit that Plaintiffs and Stuart C. Hope have remained in good standing since they became lifetime members. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations, and therefore, deny them.

12. Responding to paragraph twelve of the Amended Complaint, Defendants admit that Plaintiffs have been advised that they can no longer use the area located on the apron of the Williams Brice Stadium for parking. Defendants deny the remaining allegations of paragraph twelve of the Amended Complaint.

13. Responding to paragraph thirteen of the Amended Complaint, Defendants admit that some of the Plaintiffs have met with Gamecock Club or Athletic Department personnel to discuss parking. Defendants deny the remaining allegations of paragraph thirteen of the Amended Complaint.

14. Defendants deny the allegations of paragraph fourteen of the Amended Complaint.

15. Defendants deny the allegations of paragraph fifteen of the Amended Complaint.

16. Responding to paragraph sixteen of the Amended Complaint, Defendants admit that large portions of acreage around Williams Brice Stadium have been assigned for parking, bands, parades, and other uses. Defendants deny the remaining allegations of paragraph sixteen of the Amended Complaint.

17. Defendants deny the allegations of paragraph seventeen of the Amended Complaint.

FOR A SECOND DEFENSE

18. The Amended Complaint fails to state facts sufficient to constitute a cause of action and should therefore be dismissed.

FOR A THIRD DEFENSE

19. Plaintiffs' claims are barred or limited by the applicable statute of limitations.

FOR A FOURTH DEFENSE

20. To the extent Plaintiffs rely on any oral representations or documents other than the Memorandum of Agreement and its Exhibit A to support a breach of contract claim, Plaintiffs' claims are barred by the applicable statute of frauds.

FOR A FIFTH DEFENSE

21. The contractual provisions alleged by Plaintiffs fail for lack of consideration.

FOR A SIXTH DEFENSE

22. Plaintiffs' claims are barred by the doctrines of estoppel and/or waiver.

FOR A SEVENTH DEFENSE

23. Plaintiffs' claims are barred or limited by the doctrine of sovereign immunity.

WHEREFORE, having fully answered the allegations of the Amended Complaint, the Defendants pray that it be dismissed with prejudice.

SOWELL GRAY STEPP & LAFFITTE, LLC

By: _____

Robert E. Stepp
Bess J. DuRant
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Defendants The University of South Carolina and The University of South Carolina Gamecock Club

Columbia, South Carolina
October 3, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	IN THE FIFTH JUDICIAL CIRCUIT
Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner, and John Love,	)	Civil Action No. 2012-CP-40-3924
Plaintiffs,	)	**CERTIFICATE OF SERVICE**
vs.	)	
The University of South Carolina and The University of South Carolina Gamecock Club,	)	
Defendants.	)	

I, the undersigned paralegal of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for Defendants The University of South Carolina and The University of South Carolina Gamecock Club, do hereby certify that I have served all counsel in this action with a copy of the document specified below by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Document: Answer

Counsel Served: J. Lewis Cromer, Esquire
Tandi D. Ross, Esquire
Julius W. Babb, IV, Esquire
Lewis Cromer & Associates, LLC
1522 Lady Street
Post Office Box 11675
Columbia, South Carolina 29211
Attorneys for Plaintiffs

Kimberly Woodworth

October 3, 2012
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
RICHLAND COUNTY

LINDA RODARTE, J. PERRY KIMBALL, GEORGE M. LEE, III, MENA H. GARDINER, AND JOHN LOVE,

Plaintiff(s),

vs. Case No.: 2012-CP-40-3924

THE UNIVERSITY OF SOUTH CAROLINA AND THE UNIVERSITY OF SOUTH CAROLINA GAMECOCK CLUB,

Defendant(s).

D E P O S I T I O N

WITNESS: MARION HOPE

DATE: JUNE 4, 2013

TIME: 1:00 p.m.

LOCATION: Sowell Gray Stepp & Laffitte
1310 Gadsden Street
Columbia, South Carolina

TAKEN BY: Attorneys for Defendant(s)

REPORTED BY: JEFFREY M. THOMAS
Registered Professional Reporter

COMPUSCRIPTS, INC.
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Columbia, South Carolina 29202
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1-888-988-0086
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A. No, but if it's in those documents then whatever date it is will be the date.

Q. Do you think in the '80s?

A. No.

Q. '90s?

A. No.

Q. 2000s?

A. Yes.

Q. Okay. When was this contract entered? And I'm referring to Defendant's Exhibit 2.

A. The 8th day of May, 1986.

Q. How old would you have been when this contract was entered?

A. Gracious.

Q. I told you I'm not good with math.

A. Born in 1954. It was two days after my birthday, so 32. Is that right? Yes. Thirty-two.

Q. And previously I believe you testified that you were active in handling the negotiations along side your father for this contract?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Tell me about who you spoke with when you were negotiating.

A. If my memory serves me correct, it was -- this is memory. So I think it was Chip Clary most of the time, but I don't have notes. And that is just a guess.

Q. Did you speak with him in person?

A. Yes.

Q. Do you remember any of those conversations?

A. Yes.

Q. Please tell me about those.

A. The conversations were generally dealing specifically with the contract and what -- if we gave a certain amount of money, what we would get in return.

Q. What was that something in return that you would get?

A. Generally speaking those contained in Exhibit A which is attached to the contract. There were also some verbal assurances made some of which have been abrogated over the years.

Q. You said generally speaking Exhibit A. Is there anything outside of Exhibit A that you believe were the terms of the contract?

A. Yes. Two things. One, we were told that we would get eight basketball tickets. The contract

says four. When we went back they said, don't worry about it, you know, we will just -- you know, eight is fine as long as you continue paying, you can keep your eight.

Q. And who told you that?

A. I'm going to say Chip did. The negotiator for the University that came to our office talking about this contract.

Q. But you think that person was Chip --

A. Yes.

Q. -- Clary?

A. It's been almost 30 years.

Q. But, just for the record, you think it was Chip Clary?

A. Yes.

Q. And then you said there was a second verbal assurance?

A. The second issue dealt with priorities and where we were going to fit in the pecking order if we were to give this at the time extremely large sum of money.

And it was my understanding that we would be -- have top priority in the Gamecock Club as designated by this contract. It says four season football tickets, best available. He told us that

meant within our pecking order -- and, yes, there was a level Silver -- I guess a Silver Spur level above us. They would go first, and we would always go second for the length of the contract.

Q. And who told you this?

A. It would have been the same person that was there.

Q. And you believe that person is Chip Clary?

A. That is who I'm going to stick with, but with the caveat that it may not have been Chip.

Q. So outside of Exhibit A to the Memorandum of Agreement, the only other two terms of the contract that you believe you were promised were, one, that you would get eight basketball tickets. And, Number 2, that you were at the top of the priority except for Lifetime Silver Spurs?

A. On all of these -- all of these things that are here contained in Exhibit A, yes. Not just the football tickets. That was an example.

Q. Okay. So you were at the top of the food chain for every item listed in Exhibit A?

A. That's correct.

Q. Are there any other terms that you believe -- or scratch that. Are there any other promises that you believe that the Gamecock Club or

the University gave you outside of these two promises and those listed in Exhibit A?

A. Not that I can remember, but I reserve the right to review my file and see if something comes up.

Q. Was your father also actively involved in the negotiations?

A. Yes.

Q. Do you remember anybody that he spoke with at the University or the Gamecock Club about the lifetime membership program prior to entering into the contract?

A. No.

Q. No, you do not remember anybody?

A. No, I do not remember.

Q. Okay. Prior to entering into the lifetime membership contract, did you receive any documentation from the University or the Gamecock Club?

A. I suspect we did, yes.

Q. Okay. Do you remember what that documentation was?

A. No.

Q. Prior to entering into the contract, did you speak with anyone at the Gamecock Club or the

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT made this 8th day of MAY, 1986, by and between STUART C HOPE; hereinafter referred to as the "Donor" and the University of South Carolina Gamecock Club, hereinafter referred to as the "Gamecock Club,"

WITNESSETH:

1. Stuart C. Hope has contributed Five Thousand and No/100 Dollars ($5,000) to the University of South Carolina Gamecock Club.

2. Stuart C. Hope has agreed to contribute the additional sum of Twenty Thousand and No/100 Dollars ($20,000) payable in annual installments of Five Thousand and No/100 Dollars ($5,000) beginning in 1987 and ending in 1990 for the privilege of being a Lifetime Scholarship Member of the Gamecock Club with all the benefits appertaining thereto.

3. The University of South Carolina Gamecock Club hereby acknowledges receipt of Five Thousand and No/100 Dollars ($5,000) and agrees that in exchange for the receipt of Five Thousand and No/100 Dollars ($5,000) and the pledge of the additional Twenty Thousand and No/100 Dollars ($20,000) Stuart C. Hope will be designated as a Lifetime Scholarship Donor with all the privileges and benefits pertaining thereto as set forth in the attached Exhibit A attached hereto and made a part hereof and the terms of which are incorporated herein by reference. In accordance with said attachment, Stuart C. Hope will have the opportunity to purchase EIGHT (8) football tickets and four (4) basketball tickets. It is understood and agreed that in the event of death of the beneficiary during the lifetime of the Donor, Donor may change the beneficiary by written amended agreement with the University.

DEPOSITION EXHIBIT 2 6-4-13 HOPE
PENGAD 800-631-6989

4. The Gamecock Club agrees that the privileges and benefits of this membership will be transferred to MENA HOPE GARDINER (name), COLUMBIA, SC (address), upon the death of Stuart C. Hope.

5. All funds contributed by Stuart C. Hope under the terms of this agreement shall be deposited in a University permanent endowment account of which only the income derived therefrom may be spent as determined by the USC Gamecock Club.

IN WITNESS WHEREOF Stuart C. Hope has caused these presents to be duly authorized, and the University of South Carolina Gamecock Club has hereunto set its hand and seal on the date first above written.

DONOR:

By: _____ (L.S.)
Stuart C. Hope

Date: _____

THE UNIVERSITY OF SOUTH CAROLINA

By: _____ (L.S.)
J. Steven Beckham
Chief Executive Assistant
to the President

Date: 5/28/86

THE UNIVERSITY OF SOUTH CAROLINA
GAMECOCK CLUB

By: _____ (L.S.)
Chip Clary
Director, Gamecock Club

Date: 4-25-86

JLC&A00002

000224

EXHIBIT A

LIFETIME SCHOLARSHIP

$25,000-$40,000 (may be pro-rated over a 5 year period)

--Four Season Football Tickets (Best Available).
--Additional Four Season Football Tickets (Total of 8).
--Assigned Reserved Parking.
--Second Priority on Away and Bowl Game Tickets.
--Tickets May Be Assigned to One Designated Heir.
--Four Season Basketball Tickets (Best Available).
--Assigned Reserved Parking at Coliseum (If Available).
--Second Priority on Away and Tournament Game Tickets.
--Second Priority on Any Tickets Involving Any Other South Carolina Athletic Events.

JLC&A00003

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
RICHLAND COUNTY

LINDA RODARTE, J. PERRY KIMBALL, GEORGE M. LEE, III, MENA H. GARDINER, AND JOHN LOVE,

Plaintiff(s),

vs. Case No.: 2012-CP-40-3924

THE UNIVERSITY OF SOUTH CAROLINA AND THE UNIVERSITY OF SOUTH CAROLINA GAMECOCK CLUB,

Defendant(s).

D E P O S I T I O N

WITNESS: GEORGE LEE

DATE: JUNE 7, 2013

TIME: 9:30 a.m.

LOCATION: Sowell Gray Stepp & Laffitte
1310 Gadsden Street
Columbia, South Carolina

TAKEN BY: Attorneys for Defendant(s)

REPORTED BY: JEFFREY M. THOMAS
Registered Professional Reporter

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A. Well, I'm not positive that there was more, but I have whatever they sent me in my possession. This may be all it was.

Q. Okay. Would you please review your documents --

A. Yes, ma'am.

Q. -- to make sure that this is all you have in your possession?

A. Yes, ma'am.

Q. And also while we were off the record you were referring to letters or a letter that you wrote to who you believe was Art Baker. And you believe Art Baker was responding to you in another letter. My understanding is that you are going to look for those letters and send them to your counsel Jay Babb; is that correct?

A. Yes, ma'am. I'll do that today.

Q. Great. Thank you. And if we have any questions we can talk to you about them --

A. Okay.

Q. -- afterwards, if that is okay?

A. Yes, ma'am, certainly.

Q. Great. All right. Back to where we were which was I believe Defendant's Exhibit Number 1.

A. Yes, ma'am.

Q. Okay. And Defendant's Exhibit Number 1, which is the Lifetime Membership Contract, do you see any reference to your being assigned Space 214?

A. No. That was done in a follow-up letter.

Q. Okay. And that is the letter you are going to produce to us that we just discussed?

A. Yes, ma'am.

Q. Okay.

A. None of the contracts would have necessarily given you a space number unless you were already in a space number. And so that is why mine is unusual in that it's in writing.

Q. In this agreement do you see any reference to being assigned a space on the apron of Williams Brice Stadium?

A. No.

Q. In this agreement do you see any reference to the parking space staying the same in perpetuity?

A. No, but you have to look -- the letter will provide additional input -- insight on that.

Q. What does the contract say about parking?

A. Assigned reserved parking.

Q. What does assigned reserved parking mean?

A. You have an assigned designated space, whether it's a space number or row number. I mean,

that is way they did it up until 2008 for -- let me put it this way. I got a sign they used to put your name on them. And I still have that sign at my house. Has my father's name on it. So that parking space we parked in for by now it's probably 40 years. Well, up until it was taken.

Q. Where in your contract does it provide that you are entitled to assigned reserved parking at or near the stadium for football games?

A. It doesn't, but that is what they assigned me and agreed to in writing.

Q. Do you have any other documentation providing that you are entitled to assigned reserved parking at or near the stadium for football games?

A. No, other than the letter.

Q. Where in your contract, which has been marked as Exhibit 1, does it provide that you are entitled to the highest priority with respect to the assignment of parking spaces?

A. It does not say that. That is the way they assigned them. I mean, I don't know how they assigned them. Let me rephrase that. I don't know how they assigned them prior to that. I know how mine was assigned. I mean, why would you take something away that had been that way for 23 years

now, but 18 years as to me.

Q. Has anyone associated with the University or Gamecock Club informed you that you are entitled to Space 214?

A. Yes. Art Baker or whoever wrote me that letter, yes.

Q. Other than that letter, has anyone informed you that you are entitled to Space 214?

A. They haven't been too talkative.

Q. Is that a no?

A. Yes. They don't discuss pending litigation.

Q. Has anyone associated with the University or Gamecock Club informed you that you are entitled to assigned reserved parking at or near the stadium for football games?

A. I think I've already answered that. No, other than the letter.

Q. Has anyone associated with the University or Gamecock Club informed you that you as a Lifetime member have the highest priority with respect to the assignment of parking?

A. They haven't told me anything since I started litigation.

Q. Before litigation did anyone with the

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT made this 11th day of March, 1996, by and between George D. Cain III hereinafter referred to as the "Donor" and the University of South Carolina Gamecock Club, hereinafter referred to as the "Gamecock Club".

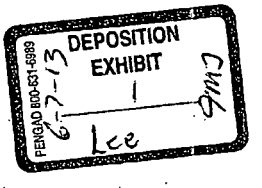
WITNESSETH:

FOR AND IN CONSIDERATION of the mutual covenants contained herein, the parties do hereby agree as follows:

1. Donor hereby agrees to irrevocably assign and contribute to the Gamecock Club the face amount of a whole life insurance policy valued at a minimum $100,000 with an A+ top 25 company as rated by the "Best Rating System".

2. It is understood and agreed that the University will be the irrevocable owner and sole beneficiary of the policy and that the policy will be the property of the Gamecock Club. The Donor will not retain any benefits under the policy.

3. Donor agrees to pay the annual premium payments of a sum not less than $1,000 on the above described policy to the Gamecock Club for a period of eight (8) years until the policy is paid up at which time the Gamecock Club will own the paid up policy. At this time, the cash value of the policy will continue to pay the premiums throughout the life of the Donor. The Donor shall provide a copy of the policy to the club and will be responsible for any further premiums that might come due on the policy. The Gamecock Club reserves the right to make payments on the policy should the Donor refuse to do so.



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4. The University of South Carolina Gamecock Club does hereby acknowledge receipt of said insurance policy and agrees that in exchange for this gift and the agreement by Donor to make all premium payments, Donor will be designated as a Lifetime Scholarship Donor for the eight (8) years he/she is paying on the policy with all the privileges and benefits pertaining thereto as set forth in the attached Exhibit A attached hereto and made a part hereof and the terms of which are incorporated herein by reference. In accordance with said attachment, [redacted] will have the opportunity to purchase tickets entitled to the Gamecock Level or membership presently held. There will be no guarantee as to where ticket assignments will be located. Assignments will be made according to membership priority and in accordance with the Gamecock Club By-laws.

5. Upon completion of the eight (8) years, Donor will have an option:

a. Make no further contributions to the Gamecock Club and receive Full Scholarship benefits for the remainder of his/her lifetime. The Donor will revert back to the Full Scholarship inheritance policy of spouse only at this time.

b. Make an annual contribution of $500.00 or more to the Gamecock Club and continue to receive the Lifetime Full Scholarship membership in the Gamecock Club which includes an inheritance of any named heir.

6. In the event the Donor defaults on the payment of the insurance premium to the Gamecock Club, all benefits of the membership including priority in the Gamecock Club to Donor shall be cancelled. In such event, the Gamecock Club shall have the right to cancel the policy or continue to make the premium payments. The Gamecock Club may

also collect and recoup from the Donor the difference between the value of the gift received and of the contribution actually paid.

7. The privileges of this membership will be transferred to [illegible] of [illegible] (Address)

upon death of the Donor as long as the Donor remains a Gamecock Club member at the Lifetime Scholarship level. Upon death of the Donor, the family has 90 days to notify the Club and provide a copy of the death certificate. Should the heir of this membership predecease the Donor, the heir of this membership may be re-named.

8. Upon the death of the Donor the proceeds from the insurance policy will be deposited in a Gamecock Club permanent endowment account.

IN WITNESS WHEREOF, [illegible] has caused these presents to be duly authorized, and the University of South Carolina Gamecock Club has hereunto set its hand and seal on the date first above written.

DONOR

By: [signature] (L.S.)

Date: 3-9-90

THE UNIVERSITY OF SOUTH CAROLINA

By: [signature] (L.S.)
Mr. Thomas L. Stepp
Secretary/Board of Trustees

Date: 4/12/91

By: [signature] (L.S.)
A. King Dixon, II
Director of Athletics

Date: 3-9-90

THE UNIVERSITY OF SOUTH CAROLINA GAMECOCK CLUB

By: Art Baker (L.S.)
Art Baker
Executive Director/Gamecock Club

Date: 6/27/90

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EXHIBIT A

LIFETIME FULL SCHOLARSHIP

--Four Season Football Tickets (Best Available)
--Additional Four Season Football Tickets (Total of 8)
--Assigned Reserved Parking
--Second Priority on Away and Bowl Game Tickets
--Tickets May Be Assigned to One Designated Heir
--Four Season Basketball Tickets (Best Available)
--Assigned Parking at Coliseum (If Available)
--Second Priority on Away and Tournament Game Tickets
--Second Priority on any Tickets Involving any other South Carolina Athletic Events

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
RICHLAND COUNTY

LINDA RODARTE, J. PERRY KIMBALL, GEORGE M. LEE, III, MENA H. GARDINER, AND JOHN LOVE,

Plaintiff(s),

vs. Case No.: 2012-CP-40-3924

THE UNIVERSITY OF SOUTH CAROLINA AND THE UNIVERSITY OF SOUTH CAROLINA GAMECOCK CLUB,

Defendant(s).

D E P O S I T I O N

WITNESS: JOHN LOVE

DATE: JUNE 5, 2013

TIME: 1:00 p.m.

LOCATION: Sowell Gray Stepp & Laffitte
1310 Gadsden Street
Columbia, South Carolina

TAKEN BY: Attorneys for Defendant(s)

REPORTED BY: JEFFREY M. THOMAS
Registered Professional Reporter

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Q. Did your wife Kimberly attend the University of South Carolina?

A. No, ma'am.

Q. Do any of your children live in South Carolina?

A. No, ma'am.

Q. Do you have any family members who live in Richland County?

A. No, ma'am.

Q. We'll get to the matter at hand now. What is your history with the Gamecock Club?

A. I joined the Gamecock Club when I graduated from the University of South Carolina and have been a member since.

Q. You graduated in 1982?

A. Yes, ma'am.

Q. Do you remember the levels that you've achieved throughout the Gamecock Club since you joined in '82 until today?

A. I don't specifically recall 1982, '83, '84, and '85, but I know that in 1986 I wrote a check for $10,000 to the Gamecock Club and pledged $1,000 a year there afterwards to attain the level of Full Scholarship which I know that I maintained until the Lifetime -- what I will call the Lifetime

deal came about, I think, in 1990.

And since 1990 I would have done the same thing every year with the exception of the life insurance premium that I paid, I think, for eight years which would have been, I suspect, 1990 to 1998, maybe. I don't have those records, but that is my recollection.

Q. So do you still pledge $1,000 each year?

A. I think when the Lifetime deal came about it was whatever the contract called for. There was an option to pay some amount of money each year. It was either 500 or 1,000 dollars. And I've done so each year ever since. I can't recall specifically what it was every year. Whatever it was, the agreement in 1990 is what I've done.

Q. When you made that $10,000 donation in 1986, did that cause you to be a Full Scholarship member?

A. Yes.

Q. And, for the record, you are referring to?

A. An October 13th, 1986, letter to me from the Gamecock Club Director Chip Clary.

MS. DURANT: Can we go off the record just a minute.

(Discussion off the record.)

BY MS. DURANT:

Q. So when you made that pledge in '86, or the $10,000 donation, that is when you became a Full Scholarship member?

A. Yes. I may have been a Full Scholarship member in 1986 already, I just don't recall. It seems to me if I had to say 250, 500, 500, 1,000, something like that is the way it would have gone in the first four years.

Q. Prior to becoming a Lifetime member, did you receive any communications from the University or the Gamecock Club about the Lifetime membership program?

A. I don't recall.

Q. Were you the -- for your family, were you the only person involved in negotiating the Lifetime membership contract?

A. Yes.

Q. And previously you mentioned a daughter from an earlier marriage?

A. Yes.

Q. What was that -- your first wife's name?

A. Susan.

Q. Was she your wife when you entered into the Lifetime membership program?

A. Yes.

Q. But she wouldn't have had anything to do with the negotiations regarding the Lifetime membership program, would she have?

A. No.

Q. Prior to becoming a Lifetime member, did you speak with anyone at the University or Gamecock Club about becoming a Lifetime member?

A. Yes.

Q. Who did you speak with?

A. I don't recall.

Q. Do you remember how many times you spoke with an official at the University or the Gamecock Club prior to becoming a Lifetime member?

A. More than once. Probably two or three times.

Q. Can you tell me what those conversations were about?

A. My conversations with the Gamecock Club were about asking instructions for life insurance applications, with whom should I speak with regard to those applications and what was the process for those applications. I think that would have been the first conversation.

The second conversation would have

confirmed that the only vehicle to purchase insurance for this endowment for the Gamecock Club would have been through one specific mechanism that the Gamecock Club controlled.

And I think the third conversation would have involved confirming that the parking for Harry Gregory, Senior; Junior; and myself would be together when we moved.

Q. Other than those topics, did you discuss anything else with an official from the University or the Gamecock Club prior to becoming a Lifetime member?

A. Not that I recall.

Q. All right. Tell me about -- you said one of the conversations would have been confirming that your parking with Henry Gregory, Senior; Junior, and yourself stayed the same. Tell me about that conversation.

A. I'm sorry. Not stay the same, but when we were moved we would be moved together to three spaces that would be adjacent to each other.

Q. Okay. Will you tell me about that conversation?

A. Yes, ma'am. The way that I found out about the Lifetime program at the Gamecock Club was

via phone with Harry Gregory, Senior -- Junior. Excuse me. Harry, Junior, who is my age. We went to school together.

So that is what prompted me to call. The one thing I remember was he said, you better hurry. And so I called the day that Harry called me. I don't recall what date it was, but I do recall hanging the phone up and calling the Gamecock Club. And it was whoever he told me to talk to, but I don't remember who that was.

And since I already had a good parking space, and my season tickets had already been moved, the biggest appeal to me personally with the Lifetime membership would have been that at an age of 29 or so this deal would kind of define what my contributions for my lifetime would be to have the best priorities for tickets and parking.

So those were the gist of my conversations. And since I was living in North Carolina, as I always have, Harry said -- Harry, Junior, said, what about the three of us having parking next to each other. And we'll put you, if the Gamecock Club will do it, between my father and myself. They will be great spaces. And would you mind on the games where you are not here if we just

kind of used your space which is between ours for our entertaining?

And I said, that is super. That is fine. And that is what we did. And that is what we've done until last year.

Q. Where were your and Harry Gregory and Harry Gregory, Junior and Senior, where were you all's parking spaces initially?

A. I can't speak to Harry, Senior, definitively, but my recollection is that his parking space was very close to where the three of us moved in I think it was 1990. Harry, Junior, and I started out with parking spaces next to each other in the fairgrounds lot.

And we moved to at that time it was the fence that was next to what is now Rogers Boulevard between Bluff Road and the pedestrian crosswalk. And then in 1986 the letters that I referred to earlier with Chip Clary and the Gamecock Club occurred.

And then sometime in the spring of 1987 the conversations that I had with the Gamecock Club about the best parking spot available and also moving four season tickets from one location to another occurred.

And so then in 1987 through, I think, '89 my parking space was in the premium lot. And it was in the area where the zone -- the end zone that was built is now. So it was not too far from where my parking has been until last year. Probably it was 200 feet, 300 feet from where my parking was until last year.

Q. When did you park next to the fence in the fairgrounds? I missed that.

A. The last year would have been 1986 before I made a $10,000 donation to the Gamecock Club in late 1986 that would affect my parking for 1987 and beyond.

Q. Okay. So in 1987 is when you moved to where the end zone is now?

A. Yes, ma'am.

Q. And you stayed there until '89?

A. Well, I think I stayed there through '89. And if I've got the year off by one, the answer would be my parking space moved when the Lifetime members in total were all reassigned premium spots wherever they each were. And I only know about myself; Harry, Junior; and Harry, Senior.

Q. So when you became a Lifetime member where did your parking -- where was your parking moved to?

A. It was moved to -- it really couldn't have been much closer to the stadium. It was right outside the gate where the players enter the stadium. The way it went was the athletic director's parking space, then Harry, Senior's parking space, then mine, and then Harry, Junior.

The athletic director's parking space was always empty. And sometime in the early '90s the lines were actually painted black and the space was taken away. Every once in awhile there would be car parked there with a parking pass, but we never saw who it was.

Q. But to clarify, when you became a Lifetime member you moved from that end zone parking lot to the space next to where the players enter the stadium; is that correct?

A. That's correct.

Q. Got you. And you were at this space until the mass move to the Farmers Market?

A. Yes, ma'am. I was in that space through 2011.

Q. When you were in the space, what I'll call the end zone space, from approximately '87 to '89, is that at the same time when Harry Gregory, Senior, and Harry Gregory, Junior, had the spaces on either

side of you?

A. No. I don't -- I think Harry, Senior, had a space very close to where we ended up being. Harry, Junior, did not to the best of my recollection. And the reason I feel pretty comfortable with telling you that now is since we have gone to school together we generally -- not every game, but often saw each other before a game. So no. Harry's -- Harry, Junior's, parking and mine moved at the same time. And I'm pretty sure it was 1990 to the spot I just described.

Q. Okay. So it was when you became a Lifetime member that Harry Gregory, Junior, was on one side of you and Harry Gregory, Senior, was on the other side of you?

A. Yes, ma'am.

Q. All right. I'm with you. I'm sorry. I got confused, but I'm with you now.

A. Thank you.

Q. Okay. Previously you mentioned you talked with someone about getting the best priority for tickets and parking. Was that tied to the $10,000 donation?

A. Yes.

Q. Okay. Do you know when that conversation

would have been?

A. October 8th, 1986.

MS. DURANT: Okay. I'm going to ask Mr. Thomas to mark this as Defendant's Exhibit 1, and hand you a copy.

(Defendant's Exhibit 1 marked for identification.)

BY MS. DURANT:

Q. Mr. Love, do you recognize this document?

A. Yes.

Q. And this is really just a housekeeping question. Do you have a full copy of this document in your possession?

A. I don't think so.

Q. Okay. I'll represent to you the one that you produced to us was missing the second page of the agreement and it was also missing Exhibit A.

A. That is entirely possible.

MS. DURANT: Okay. Therefore I'm going to also ask Mr. Thomas to mark this document as Defendant's Exhibit 2.

(Defendant's Exhibit 2 marked for identification.)

BY MS. DURANT:

Q. Mr. Love, I'll represent to you that this

Defendant's Exhibit 2 was the Exhibit A that the University used for Full Scholarship members. Excuse me. Lifetime Full Scholarship members. Does this copy fairly and accurately represent what you believe was Exhibit A to your contract?

A. Yes.

Q. All right. And Defendant's Exhibit 1, does that fairly and accurately represent a copy of your contract with the University?

A. Yes.

Q. Back to Defendant's Exhibit 1 and Defendant's Exhibit 2, is this the document that we are here about today?

A. Yes, ma'am, partially. I think also these documents in 1986, which may be specific to me and not to everyone else involved in this matter, are relevant and important.

Q. Okay. What is the date of this agreement?

A. March 16th, 1990.

Q. And who are the parties to the agreement?

A. It has Donor, myself, and the University, Thomas Stepp, and the Gamecock Club Director, Art Baker, and King Dixon who were -- the Second, Director of Athletics.

Q. What consideration did you give in

exchange for this agreement?

A. Adhere to the stipulations of the contract which were to qualify for a life insurance policy that to the best of my recollection the Gamecock Club is both the beneficiary of and owner of, paid the premiums consistently, whatever they were, until the premiums were paid, which I think is what is known as a full life policy.

I think that was eight years. And then maintain, if I desired, an annual giving amount that would keep my priority exactly where it was agreed.

Q. What did you receive in exchange for your consideration?

A. Different decals and stickers which I guess everyone did. The best parking spot available around the stadium which was superior. And I'm sure my improvement in my ticket priority, but I did not change my seat location.

Q. Where in this agreement does it say you will have best parking?

A. The agreement is a lifetime agreement. The agreement covers that which I did at the University of South Carolina. I confirmed by telephone what I was doing. I signed the contract. So my answer is Exhibit A is just fine worded the

way it's worded as far as I'm concerned with regard to answering your question.

Q. So you contend that Exhibit A provides that you have best parking?

A. It says assigned reserve parking.

Q. So you interpreted assigned reserve parking to be best parking?

A. Well, yes. And, once again, in 1986, four years prior in my letter of October 8th the exact words that I used, the best parking pass available. And on October 13th the response was, I'm sure they, the opportunity is available for selection will suit your needs.

And it happened in 1986. And then in 2000 -- excuse me. In 1990 my parking improved based upon the -- as a matter of fact, the only thing that changed for me as far as location of anything with regard to the University of South Carolina in 1990 was the location of my parking spot which improved.

Q. Other than assigned reserve parking and the -- your October 1986 letter noting that you have best parking, do you have any other support for your contention that you are entitled to the best parking?

A. The conversations that I had with the Gamecock Club, the two or three that I had. One of those conversations that was half of the focus of the conversation which was if we do this what happens to our parking.

And the question was answered affirmatively by the Gamecock Club to the satisfaction of Harry, Senior; Junior; and myself, sometime in the spring of 1990.

Q. So you had conversations with the Gamecock Club in the spring of 1990?

A. No. Harry, Senior, did. This is all third-hand relayed to me. And then the parking space materialized. And, like I say, I've been there until last year. I did not in 1990 go to the roundhouse and sit down with the Gamecock Club and pick our parking spots. Because I was in North Carolina, my friends did that for me and they did a good job. And the Gamecock Club did a good job.

Q. Was that Harry Gregory, Junior or Senior that picked out the spot?

A. To the best of my recollection it was Senior that went on behalf of Junior and myself and himself.

Q. Particularly your conversations with the

Gamecock Club, were those conversations back in 1986?

A. Well, I had -- remember I said I had three conversations with the Gamecock Club surrounding Lifetime. And in one of those conversations we discussed parking. The other two, one was, as I said, to go over the qualifications for Lifetime. And then one related to the purchase of the insurance product and the particulars about what insurance policies would be satisfactory or how that worked.

Q. But those conversations would have been in '86?

A. No. Those were in 1990. Remember I have two different sets of conversations, ones in '86 that are really about the same thing; where are my tickets going to be and where is my parking pass going to be. 1990, where are my tickets going to be, where is my parking pass going to be.

The difference in 1986 was Chip Clary says, write me a check for $10,000. And I did it. In 1990 the Gamecock Club says, give us this $100,000 policy and pay it for eight years and you are finished.

And at 29 or 30 years old, I thought that

was a great deal because I would suspect that I guess I'm probably about the youngest person that took advantage of the Lifetime program. And my thought was I can afford to do it. It will be great for me. And it will set in stone for the rest of my life where my priorities are, irrespective of what anybody else does in the future.

Q. Regarding solely the 1990 conversation, what did the University or the Gamecock Club tell you about parking?

A. I don't have ironclad specific recollection that you will move next to Harry, Senior. We had talked about having our parking together. And I said, will this work do you think? Do you think you all can put the three of us together?

And my recollection -- my recollection would be very clear if the answer was negative because, in other words, that was what I was looking for. So if they had said, no, we can't do that, I probably wouldn't have done a Lifetime deal because I already had a really good parking space. And I had a letter that I lost years later and found this past week and an understanding with the Gamecock Club director, but he was gone. Chip Clary had

left.

So I'm glad I have that in writing now today, but really my focus for the Lifetime was, okay, can you do these parking passes together? And then when I'm finished with this eight years, am I really finished giving money other than maybe 500 bucks a year to the Gamecock Club?

And the answer is yes, yes, and yes. So those were the affirmatives that I'm pretty positive I got by telephone at that point in time because those would be the three questions I would have had.

Q. I know you previously testified earlier that you do not remember who you spoke with in 1986. Do you remember who you spoke with in 1990?

A. No, I didn't say that I don't think. If I did, I'm sorry. 1986 I know I spoke with Chip Clary. And the letter that I've given you a copy of to him confirms our conversation.

That is kind of my evidence of that. If you want to put me on the stand, do you remember that it was Chip Clary? I honestly don't remember, but the letter memorializes our conversation.

In 1990, no, I don't, but I was given the name and the phone number of who to call by Harry, Junior. And that is who I spoke with.

Q. In Paragraph 5 of Defendant's Exhibit 1, is this the option that you were previously talking about?

A. Yes.

Q. Which one out of A, B, and C, did you choose?

A. B.

Q. So even up to 2013 you've been making annual contributions of $500 to the Gamecock Club?

A. Yes.

Q. Okay. When you entered into this contract, does space 634 sound familiar?

A. Yes, it does.

Q. Okay. Is that the space that you had from --

MR. BABB: I'm sorry. Did you say 634?

MS. DURANT: 634.

BY MS. DURANT:

Q. Is that the space that you had from 1990 until 2011?

A. Yes, ma'am.

Q. Okay. Was this space by the east or the west stands?

A. Next to the zone. Would that be -- it's

where the team comes in. West. Southwest.

Q. Where are your season tickets?

A. West club.

Q. Where do you enter the stadium?

A. Until last year I entered the stadium at the gate literally right next to my parking space. Probably -- I don't know the gate number. It was probably 15 feet from my parking space.

Q. And I believe I already asked you this, but did you receive any documents from the University or Gamecock Club regarding the Lifetime membership before you became a Lifetime member?

A. You know, I'm going to say I did not. I don't think I did. Or if they came, I don't think I saw them because, once again -- and this recollection is very clear. The reason that I called about this program was a friend of mine called me and said, you ought to call and look into this, which is what I did.

I am not sure whether there actually was a communication with all the Gamecock Club members. I don't know. I couldn't comment on it one way or the other.

Q. Tell me about your conversation with Harry Gregory and when he called you to join about joining

And a long time before it became public, the plan to move parking, there were conversations about the new parking facility and that there would be no more parking around the stadium.

So let's just say 2009, whenever it would have been. I can't state specifically, but probably in the parking lot around the stadium in 2009 if I had to pinpoint my first conversation about the possibility of everyone moving.

Q. Do you remember who would have told you about the moving of the spaces?

A. Well, I don't want to keep saying Harry Gregory, Junior. I mean, the point is is that we park next to each other. And in conversations before a game, whoever was standing there. You know, that was as -- as I'm sure when you talk to others, you will find that became a fairly common topic of conversation in those years. So I can't state specifically who it was, but it might have been Harry.

Q. When it was a common topic of conversation were you under the impression that your space was going to be moved?

A. I didn't know.

Q. Do you remember when you specifically

learned that your space was going to be moved?

A. I want to get this right. I can back into it. I came to Columbia in the spring of 2012 and visited with the Gamecock Club regarding the letter that I didn't have at the time in 1986. And to understand what my priority was for the parking spaces that were going to be moved and to reaffirm that the best parking space available was certainly what I was going to get.

Prior to that I was called, and I'm going to say that would have been either late 2011 or early 2012. And when I saw called, it would have been to the Gamecock Club. And if you asked me who I spoke with, I can -- if I saw a list of folks that were employees at that time I could tell you. I spoke with two young men in the spring of 2012 in the roundhouse in the office that used to be the athletic director's office. I can't tell you who it was.

Q. Was that the phone call or the meeting in person?

A. The meeting in person was with the same person that I spoke with over the phone except that I spoke with one person over the phone and I met with two.

Q. Okay. Patrick McFarland?

A. I think so. Give me another name.

Q. Jeff Crane?

A. Yes. Those would be the two that I met with in the spring. Jeff Crane and Patrick McFarland. You are right.

Q. Okay. And that meeting was at the roundhouse?

A. Yes.

Q. Okay. Will you tell me what you told them about priority?

A. That was not a good conversation. They were evasive when I pressed them about the best parking available. They stated they couldn't produce records prior to seven years ago because one of my contentions in the conversation is that my points were all wrong because, as an example, this $10,000 gift wasn't reflected in my points.

I've got to be honest and tell you that living 200 miles away from Columbia is both good and bad. It's good because you kind of don't have to be involved in the middle of everything. And it's bad because sometimes you don't find out what is going on until after it's already happened.

And that would be kind of how my

involvement with looking at my parking and what my agreement was with the University can be described. When -- by conversation sometime in late 2011 or early 2012 the rumblings that the Gamecock Club had with folks here in Columbia, some of those were public I'm told, about where -- how this parking was going to be different. It was going to be better. It was going to be nicer, but it was going to be further away.

And, of course, we had gone through what by now you can watch on the internet which is the suit between somebody that sued the University that said, I shouldn't have to pay for this parking space because I'm a Lifetime person. And just kind of watched that.

So these were kind of the ways I found out what was going on with parking, but when I sat down with them in the spring of 2012, it was not a good conversation because when I said, you know, our parking is the best available. And they said, well, I think you are going to be happy, but I can't tell you that that is what is going to happen with you.

And I said, well, not only is it supposed to be the best available. And they said, well, where does it say that in the contract? And I said,

well, no one probably -- certainly I would not have done this deal if the parking wasn't going to be the best available because I already had good parking.

And my deal was that there were two basic reasons that I did this Lifetime deal. And I explained to them what they were, which was to pay -- to be guaranteed status for my life and to be guaranteed a parking space for my life of these qualities.

And I said further, go back and find the letter that I wrote you in 1986 because from my perspective I think that I'm being discriminated against two times. At that point in time I didn't have recollection of the wording either of my letter to Chip Clary or Chip Clary's wording of his letter to me.

I only had recollection vaguely of our conversations which would have been, you know, almost 30 years prior. So -- but I said, certainly you all have records of giving. You cashed all the checks. And certainly you know where you moved everybody in 1990, all of these parking spaces moved to the very best available at the same time. And everybody was extremely happy that would be that I was -- the people that I knew, which were only two,

but the people that they knew were many more.

That we were given exactly what we were promised. And these guys looked at me like I was telling them something they had never heard. Of course, they weren't here in either 1986 or 1990.

So the vagueness that I got from both of them in that conversation which -- it was warm. So I want to say it was April or May. And I can actually go back and -- because I had a friend that rode down with me. And he can probably give me a better date, but the point is it's whatever date he said that he could meet. That would have been McFarland.

When I left there I called Harry, Junior. And I said, you know what, I don't think they are going to treat us right when we move these parking spaces. What do you know? And he told me he knew about the same thing that I knew, which is that the University did not consider parking pass or parking space, best parking space part of the contract that we had all signed. And then he went on to tell me the different conversations that he had with people that I didn't talk to.

Q. Do you remember some of the people that he claims he talked to?

was in there you said, the other young man? You gave me a name and I said yes.

Q. Jeff Crane.

A. Jeff Crane said, well, what if somebody gave a million dollars tomorrow? I said, they can have the 210th best parking space. I said -- it's just got to be very clear. It won't be 30 feet further away than if somebody gave a billion dollars. And then what that would show to whoever gave money to the University, that the University is an honorable institution that upholds the deals they make.

So that is a long answer to your question, but that is really my only emotion in this event. And that really -- I told Thad Henry and I told the business school. I said, you know, I just don't feel good about making this gift. I really wasn't sure if canceling the pledge would have any impact on anybody at the University, but I said, wait a minute. It probably would have if it had been a million dollars. If my gift to the University had been $200,000 a year, I'm telling you I don't believe we would be sitting here talking, but it wasn't. So anyway.

Q. On the front page or the first page of

parking selection process at South Carolina as it relates to Lifetime members. We've had, I don't know, dozens of conversations probably.

Q. Okay. And then the next e-mail in the e-mail chain is you are forwarding on Harry Gregory's response to Jeff Crane, Patrick McFarland, and Thad Henry; is that correct?

A. Right.

Q. Okay. And that was about 30 minutes after you received it from Harry you forwarded it on?

A. Yes.

Q. Okay. In the June 14th, 10:18 a.m., e-mail you refer to Jimmy Rogers?

A. Yes.

Q. Getting a parking space with Jimmy Rogers. Can you tell me about that?

A. Yes.

Q. Okay.

A. I don't know what the name of the premium private parking facility behind the Cockabose Railroad is, but I'm guessing that it was built in 1986 and opened in 1987 because Jimmy called me and said, I need 7,500 bucks for a parking space in this facility that is being built. It will be the best thing you've ever done.

And I said, well, why are you all giving that to somebody? Why don't you give that money to the school? And that is how my thought for my $10,000 to the University came about.

And really actually just sitting here right now that it dawns upon me that that was very much part of the logic that I had with regard to this parking space and in my conversation with Chip Clary. I said, Chip, what the University should do is the same thing these private parking facilities are doing which is to say give me a check and then give me dues each year, and I'll give you a parking space closer than -- I'll give you a parking space on this side of the Cockabose.

He said, we probably should do that. I said, well, do it for me. And that is what he did. So the point was I thought I was doing a good thing instead of giving money to somebody that was building a private parking facility over here, I gave money to the University over here, my school.

And that was what I was -- and I had probably mentioned that in our conversation briefly face-to-face at the roundhouse, but, once again, those young men weren't around at that point in time.

And I guess I was probably feeling a little bit picked on because I thought I had done something really good. And if I had given $7,500 for a parking space I would have had a parking space, a private one, in a walled facility with bands and bathrooms that is literally -- well, it's closer than any of the new premium spots.

I don't care so much that the physical lot has been moved because, you know, I don't feel like I can control the world, but the point is that it was important for them to understand my point of reference with regard to what I did in 19 -- and I said '87. It turns out it was '86, but in conversation they said, well, we don't have any record of what you did in 1986. And I didn't think that I had the record either.

Q. So that conversation with Chip about how the University should incorporate some of the private -- the idea of paying money for a good space, that would have occurred in 1986?

A. That's right. And impetus of all of that conversation was Jimmy Rogers who owns Granger-Owings here in Columbia.

Q. The final e-mail in Defendant's Exhibit 5, which is on Page Defendant 004 through 6 from Jeff

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT made this 18th day of March, 1990, by and between JOHN H. LOVE hereinafter referred to as the "Donor" and the University of South Carolina Gamecock Club, hereinafter referred to as the "Gamecock Club".

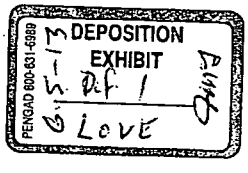
WITNESSETH:

FOR AND IN CONSIDERATION of the mutual covenants contained herein, the parties do hereby agree as follows:

1. Donor hereby agrees to irrevocably assign and contribute to the Gamecock Club the face amount of a whole life insurance policy valued at a minimum $100,000 with an A+ top 25 company as rated by the "Best Rating System".

2. It is understood and agreed that the University will be the irrevocable owner and sole beneficiary of the policy and that the policy will be the property of the Gamecock Club. The Donor will not retain any benefits under the policy.

3. Donor agrees to pay the annual premium payments of a sum not less than $1,000 on the above described policy to the Gamecock Club for a period of eight (8) years until the policy is paid up at which time the Gamecock Club will own the paid up policy. At this time, the cash value of the policy will continue to pay the premiums throughout the life of the Donor. The Donor shall provide a copy of the policy to the club and will be responsible for any further premiums that might come due on the policy. The Gamecock Club reserves the right to make payments on the policy should the Donor refuse to do so.



4. The University of South Carolina Gamecock Club does hereby acknowledge receipt of said insurance policy and agrees that in exchange for this gift and the agreement by Donor to make all premium payments, Donor will be designated as a Lifetime Scholarship Donor for the eight (8) years he/she is paying on the policy with all the privileges and benefits pertaining thereto as set forth in the attached Exhibit A attached hereto and made a part hereof and the terms of which are incorporated herein by reference. In accordance with said attachment, JOHN H. LOVE will have the opportunity to purchase tickets entitled to the Gamecock Level or membership presently held. There will be no guarantee as to where ticket assignments will be located. Assignments will be made according to membership priority and in accordance with the Gamecock Club By-laws.

5. Upon completion of the eight (8) years, Donor will have an option:

a. Make no further contributions to the Gamecock Club and receive Full Scholarship benefits for the remainder of his/her lifetime. The Donor will revert back to the Full Scholarship inheritance policy of spouse only at this time.

b. Make an annual contribution of $500.00 or more to the Gamecock Club and continue to receive the Lifetime Full Scholarship membership in the Gamecock Club which includes an inheritance of any named heir.

6. In the event the Donor defaults on the payment of the insurance premium to the Gamecock Club, all benefits of the membership including priority in the Gamecock Club to Donor shall be cancelled. In such event, the Gamecock Club shall have the right to cancel the policy or continue to make the premium payments. The Gamecock Club may

also collect and recoup from the Donor the difference between the value of the gift received and of the contribution actually paid.

7. The privileges of this membership will be transferred to SUSAN B. LOVE of BURLINGTON N.C. (Address) upon death of the Donor as long as the Donor remains a Gamecock Club member at the Lifetime Scholarship level. Upon death of the Donor, the family has 90 days to notify the Club and provide a copy of the death certificate. Should the heir of this membership predecease the Donor, the heir of this membership may be re-named.

8. Upon the death of the Donor the proceeds from the insurance policy will be deposited in a Gamecock Club permanent endowment account.

IN WITNESS WHEREOF, John H. Love has caused these presents to be duly authorized, and the University of South Carolina Gamecock Club has hereunto set its hand and seal on the date first above written.

DONOR

By: _____ (L.S.)

Date: 3.16.90

THE UNIVERSITY OF SOUTH CAROLINA

By: _____ (L.S.)
Mr. Thomas L. Stepp
Sceretary/Board of Trustees

Date: 4/12/91

By: _____ (L.S.)
A. King Dixon, II
Director of Athletics

Date: 7-9-90

THE UNIVERSITY OF SOUTH CAROLINA
GAMECOCK CLUB

By: _____ (L.S.)
Art Baker
Executive Director/Gamecock Club

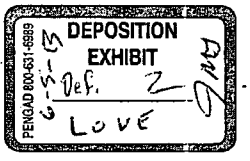
Date: 6/29/90

EXHIBIT A

LIFETIME FULL SCHOLARSHIP

$25,000 - $40,000 (may be pro-rated over a 5 yr. period)

--Four Season Football Tickets (Best Available)
--Additional Four Season Football Tickets (Total of 8)
--Assigned Reserved Parking
--Second Priority on Away and Bowl Game Tickets
--Tickets May Be Assigned to One Designated Heir
--Four Season Basketball Tickets (Best Available)
--Assigned Parking at Coliseum (If Available)
--Second Priority on Away and Tournament Game Tickets
--Second Priority on Any Tickets Involving Any Other South Carolina Athletic Events



J. LEWIS CROMER
& ASSOCIATES L.L.C.
ATTORNEYS AND COUNSELORS AT LAW

J. LEWIS CROMER
JULIUS W. BABB, IV
J. PAUL PORTER • ASHLEY C. STORY

August 19, 2013

Via Hand Delivery and Email
The Honorable G. Thomas Cooper, Jr.
Circuit Court Judge
P O Box 192
1701 Main Street, Room 323
Columbia, SC 29202-0192

RE: **Pending Motions for Summary Judgment**
Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner and Mitchell Bailey v. The University of South Carolina and The University of South Carolina Gamecock Club (2012-CP-40-3924)

Dear Judge Cooper:

Please find attached three separate proposed orders on the cross motions for summary judgment heard before you on August 9, 2013 (Attachments A-C). The first two proposed orders deny both the defendants' and plaintiffs' motions for summary judgment. The third proposed order denies defendants' motion but grants the plaintiffs' motion.

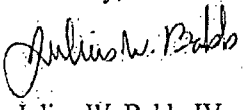
I am also enclosing several documents that were provided to me after the hearing by opposing counsel. Apparently they were recently produced in response to a subpoena to Harry Gregory—a lifetime member (Attachments D & E). I believe these documents further show that lifetime members were to be provided priority ahead of non-lifetime members. The deposition of Mr. Gregory was scheduled to be taken on August 20, 2013 but it has been postponed. I believe that this deposition may be necessary in light of the recent production (261 pages were produced).

As discussed in the hearing, I notified opposing counsel of the deposition excerpts I gave to the Court (Pages 1, 17-21 from Marion Hope's Deposition and Pages 11-30, 33-38, 52, 62-64, & 66-67 from John Love's Deposition). I have not received any additional excerpts from defendants in response, but in an interest of fairness I am attaching copies of the complete transcripts of the depositions of Marion Hope and John Love (Attachment F & G). The depositions of Mena Gardiner and George Lee are also available to provide further support should the Court so desire.

Please do not hesitate to contact me with any further questions or concerns regarding this matter.

With kindest regards, I remain

Sincerely,



Julius W. Babb, IV

Enclosures

Cc: Richland County Clerk of Court (*via Hand Delivery Only*)
Robert E. Stepp, Esquire
Bess DuRant, Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	IN THE FIFTH JUDICIAL CIRCUIT
Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner, and John Love,	)	Civil Action No. 2012-CP-40-3924
Plaintiffs,	)	
vs.	)	**AFFIDAVIT OF MARCY GIRTON**
The University of South Carolina and The University of South Carolina Gamecock Club,	)	
Defendants.	)	

RICHLAND COUNTY
FILED
2012 SEP -7 AM 10: 22
JEANETTE W. McBRIDE
C.C.P. & G.S.

Personally appeared before me Marcy Girton, who, first being duly sworn, deposes and says as follows:

1. I am Marcy Girton. I am a Deputy Director of Athletics for the University of South Carolina ("USC"). This affidavit is based upon my personal knowledge and a review of institutional documents.

2. As Deputy Director of Athletics for USC, I am familiar with Lifetime Silver Spur Memberships and Lifetime Full Scholarship Membership (collectively "Lifetime Memberships" or "Lifetime Members"), the rights and privileges associated therewith, and the priority points system referenced in Plaintiff's Complaint and Amended Complaint.

3. Plaintiffs are "Lifetime Members" of the Gamecock Club, either as "Lifetime Silver Spur" members, or as "Lifetime Full Scholarship" members. The benefits of Lifetime Members are set out in a written agreement between each member and the Gamecock Club. A copy of the Lifetime Member agreement of each of the Plaintiffs is attached as Exhibit A

through E ("the Agreement"). Exhibit A to each Agreement sets out the benefits conferred upon the Lifetime Member. With respect to parking, the Agreement provides that the Lifetime member will receive "Assigned Reserved Parking," but does not specify the location of the parking or how such parking will be assigned. With respect to ticket allocations, the Agreement provides that "[a]ssignments will be made according to membership priority and in accordance with the Gamecock Club By-Laws."

4. In February and November of 2006, the Board of Directors of the Gamecock Club discussed and approved a priority point system for the allocation of certain benefits associated with membership in the Gamecock Club.

5. On November 3, 2006, the Board of Directors of the Gamecock Club amended the Constitution and By-Laws of the Gamecock Club ("By-Laws") to provide that all parking for USC football home games will be assigned based upon the member's priority point ranking.

6. Today, under the priority points system, points are awarded as follows:

   a. Gamecock Club members will receive one point for every $100 donation and two points for each consecutive year of giving.

   b. Gamecock Club members will receive one point for every season ticket purchased for football, men's and women's basketball, and baseball. The season ticket must be purchased through the Gamecock Club.

7. Beginning with the 2012 USC football season, parking on the apron around the Stadium will no longer be available to Gamecock Club members, including Plaintiffs. Instead, Gamecock Club members may be able to select parking in one of USC's parking facilities: the Armory, Carolina Park at the South Carolina State Fairgrounds, or the new facility located on

the former Farmers' Market site, directly adjacent to Williams-Brice Stadium ("Stadium") on Bluff Road.

8. The Farmers' Market parking site is a state-of-the-art project that will include shaded tent zones and permanent restrooms, and in some areas, cable TV hookups and electrical outlets. The Farmers' Market parking site also includes a central open space, called The Garnet Way, which is a grassy promenade lined with scarlet oaks and provides a route for the marching band, cheerleaders, and football team to parade through the venue on the way to the Stadium.

9. As provided in the By-Laws of the Gamecock Club, the priority for selection of parking spaces in the Farmers' Market is based upon the point system. Plaintiffs were each given priority points based on the criteria established in the By-Laws. For this purpose, each Plaintiff was deemed to have made donations to the Gamecock Club in the amount of any cash contribution they gave to the Gamecock Club when they became Lifetime Members, or in the amount of the full value of certain life insurance policies assigned to the Gamecock Club as a part of the Lifetime Membership program then in effect.

10. On or about May 30, 2012, letters were sent to Plaintiffs and other Gamecock Club members notifying them of their parking selection dates and time which were based on the donor's current Gamecock Club priority point total.

11. Two days before each Lifetime Member was to select his or her parking space, he or she received an email. The email informed the Lifetime member that "[a]s a Lifetime Silver Spur or Lifetime Full Scholarship member, should you choose not to participate in the parking selection process in the new Farmer's Market parking venue, the Athletics Department will assign a reserved space for you in Quad 1. Please notify Caitlyn McAnulty in the

Gamecock Club by phone (803)777.6279 or email (mcanultc@mailbox.sc.edu) if you prefer this option within 24 hours of your selection time." The assigning of a reserved space was a special priority provided to Lifetime Members.

12. Plaintiffs and other Gamecock Club members could select their parking spaces either by submitting a paper form or by logging into a secure website at the donor's specified time to select his or her parking space. Each Plaintiff chose to select his or her parking spot online.

13. Parking spaces were reserved for the Lifetime Members in two sections of the Farmers' Market site – (1) Quad 1 and (2) Quad 2.

14. On Friday, June 8, 2012 at 2:54 pm, Plaintiff Rodarte selected Spaces 52, 53, and 54 in Row 1 in Premium North.

15. On Tuesday, June 12, 2012 at 9:31 am, Plaintiff Kimball selected Space 198 in Row 1 in Premium North.

16. On Wednesday, June 13, 2012 at 9:33 am, Plaintiff Lee selected Spaces 1 and 2 of Row 4 in Quad 1.

17. On Wednesday, June 13, 2012 at 3:07 pm, Plaintiff Gardiner selected Spaces 6 and 7 in Row 1 in Garnet Way 4.

18. On Tuesday, June 12, 2012 at 12:40 pm, Plaintiff Love selected Spaces 18 and 19 in Row 6 in Premium South.

19. A copy of a diagram of the Farmers' Market Facility and the parking places therein selected by Plaintiffs is attached hereto as **Exhibit F**.

20. The Plaintiffs have received "Assigned Reserved Parking."

21. For the 2012 football season, the priority point parking assignment system has been fully implemented with respect to the Plaintiffs.

22. If required to do so by the Court, different parking spaces can be assigned to Plaintiffs.

FURTHER AFFIANT SAYETH NOT.

Marcy Girton

Sworn to before me this 27th day of July, 2012

Notary Public for South Carolina
My commission expires: 10-4-2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT made this 8 day of March, 1990, by and between Linda N. Rodarte, hereinafter referred to as the "Donor" and the University of South Carolina Gamecock Club, hereinafter referred to as the "Gamecock Club".

WITNESSETH:

FOR AND IN CONSIDERATION of the mutual covenants contained herein, the parties do hereby agree as follows;

1. Donor hereby agrees to irrevocably assign and contribute to the Gamecock Club the face amount of a whole life insurance policy valued at a minimum $200,000 with an A+ top 25 company as rated by the "Best Rating System".

2. It is understood and agreed that the University will be irrevocable owner and sole beneficiary of the policy and that the policy will be the property of the Gamecock Club. The Donor will not retain any benefits under the policy.

3. Donor agrees to pay the annual premium payments of a sum not less than $2,000 on the above described policy to the Gamecock Club for a period of eight (8) years until the policy is paid up at which time the Gamecock Club will own the paid up policy. At this time, the cash value of the policy will continue to pay the premiums throughout the life of the Donor. The Donor shall provide a copy of the policy to the Club and will be responsible for any further premiums that might come due on the policy. The Gamecock Club reserves the right to make payments on the policy should the Donor refuse to do so.

EXHIBIT
A
000277

3. The University of South Carolina Gamecock Club does hereby acknowledge receipt of said policy and agrees that in exchange for this gift and the agreement by Donor to make all premium payments, Donor will be designated as a Lifetime Silver Spur for the eight (8) years he is paying on the policy with all the privileges and benefits pertaining thereto as set forth in the attached Exhibit A attached hereto and made a part hereof and the terms of which are incorporated herein by reference. In accordance with said attachment, Linda N. Rodarte will have the opportunity to purchase tickets entitled to the Gamecock Level or membership presently held. There will be no guarantee as to where ticket assignments will be located. Assignments will be made according to membership priority and in accordance with the Gamecock Club By-laws.

6. Upon completion of the eight (8) years, donor will have an option:

a. Pay no more and revert membership back to a payed up Silver Spur membership with membership priorities existing at that time.

b. Pay $1,000 and maintain Lifetime Silver Spur membership with priorities in force at that time with one inheritance.

c. Pay $500 a year and revert back to a Lifetime Full Scholarship membership with one inheritance.

7. In the event the Donor defaults on the payment of the insurance premium to the Gamecock Club, all benefits of membership including priority in the Gamecock Club to Donor shall be cancelled. In such event, the Gamecock Club may also collect and recoup from the Donor the difference between the value of the gift received and of the contribution actually paid.

8. The privilege of this membership will be transferred to The First Born of Linda N. Podarte of 3915 Kenilworth Rd Columbia, SC 29205 (Address) upon the death of the Donor as long as the Donor remains a Gamecock Club member at the Lifetime level. Upon death of the Donor, the family has 90 days to notify the Club and provide a copy of the death certificate. Should the heir of this membership predecease the Donor, the heir of this membership may be re-named.

9. Upon the death of the Donor the proceeds from the insurance policy will be deposited in a Gamecock Club permanent endowment account.

IN WITNESS WHEREOF, _____ has caused these presents to be duly authorized, and the University of South Carolina Gamecock Club has hereunto set its hand and seal on the date first above written.

DONOR

By: Linda Podarte (L.S.)

Date: 3/8/90

By: _____ (L.S.)
A. King Dixon, II
Director of Athletics

Date: _____

THE UNIVERSITY OF SOUTH CAROLINA

By: _____ (L.S.)
Thomas L. Stepp
Secretary/Board of Trustees

Date: _____

THE UNIVERSITY OF SOUTH CAROLINA
GAMECOCK CLUB

By: Art Baker (L.S.)
Art Baker
Executive Director/Gamecock Club

Date: 6/29/90

000279

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT made this 23 day of March, 1990, by and between J. Perry Kimbell hereinafter referred to as the "Donor" and the University of South Carolina Gamecock Club, hereinafter referred to as the "Gamecock Club".

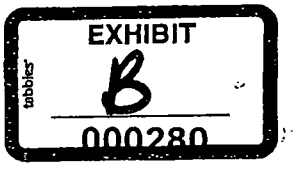
WITNESSETH:

FOR AND IN CONSIDERATION of the mutual covenants contained herein, the parties do hereby agree as follows:

1. Donor hereby agrees to irrevocably assign and contribute to the Gamecock Club the face amount of a whole life insurance policy valued at a minimum $100,000 with an A+ top 25 company as rated by the "Best Rating System".

2. It is understood and agreed that the University will be the irrevocable owner and sole beneficiary of the policy and that the policy will be the property of the Gamecock Club. The Donor will not retain any benefits under the policy.

3. Donor agrees to pay the annual premium payments of a sum not less than $1,000 on the above described policy to the Gamecock Club for a period of eight (8) years until the policy is paid up at which time the Gamecock Club will own the paid up policy. At this time, the cash value of the policy will continue to pay the premiums throughout the life of the Donor. The Donor shall provide a copy of the policy to the club and will be responsible for any further premiums that might come due on the policy. The Gamecock Club reserves the right to make payments on the policy should the Donor refuse to do so.



4. The University of South Carolina Gamecock Club does hereby acknowledge receipt of said insurance policy and agrees that in exchange for this gift and the agreement by Donor to make all premium payments, Donor will be designated as a Lifetime Scholarship Donor for the eight (8) years he/she is paying on the policy with all the privileges and benefits pertaining thereto as set forth in the attached Exhibit A attached hereto and made a part hereof and the terms of which are incorporated herein by reference. In accordance with said attachment, J. Perry Kimbrell will have the opportunity to purchase tickets entitled to the Gamecock Level or membership presently held. There will be no guarantee as to where ticket assignments will be located. Assignments will be made according to membership priority and in accordance with the Gamecock Club By-laws.

5. Upon completion of the eight (8) years, Donor will have an option:

a. Make no further contributions to the Gamecock Club and receive Full Scholarship benefits for the remainder of his/her lifetime. The Donor will revert back to the Full Scholarship inheritance policy of spouse only at this time.

b. Make an annual contribution of $500.00 or more to the Gamecock Club and continue to receive the Lifetime Full Scholarship membership in the Gamecock Club which includes an inheritance of any named heir.

6. In the event the Donor defaults on the payment of the insurance premium to the Gamecock Club, all benefits of the membership including priority in the Gamecock Club to Donor shall be cancelled. In such event, the Gamecock Club shall have the right to cancel the policy or continue to make the premium payments. The Gamecock Club may

also collect and recoup from the Donor the difference between the value of the gift received and of the contribution actually paid.

7. The privileges of this membership will be transferred to Teri Lee Kimbell of 158 Seclusion ct. Lexington, S.C. 29072 (Address) upon death of the Donor as long as the Donor remains a Gamecock Club member at the Lifetime Scholarship level. Upon death of the Donor, the family has 90 days to notify the Club and provide a copy of the death certificate. Should the heir of this membership predecease the Donor, the heir of this membership may be re-named.

8. Upon the death of the Donor the proceeds from the insurance policy will be deposited in a Gamecock Club permanent endowment account.

IN WITNESS WHEREOF, J. Perry Kimbell has caused these presents to be duly authorized, and the University of South Carolina Gamecock Club has hereunto set its hand and seal on the date first above written.

DONOR

By: J. Perry Kimbell (L.S.)

Date: March 23, 1990

THE UNIVERSITY OF SOUTH CAROLINA

By: [signature] (L.S.)
Mr. Thomas L. Stepp
Secretary/Board of Trustees

Date: 4/17/91

By: [signature] (L.S.)
A. King Dixon, II
Director of Athletics

Date: 7-9-90

THE UNIVERSITY OF SOUTH CAROLINA
GAMECOCK CLUB

By: Art Baker (L.S.)
Art Baker
Executive Director/Gamecock Club

Date: 6/29/90

000282

EXHIBIT A

LIFETIME FULL SCHOLARSHIP

--Four Season Football Tickets (Best Available)
--Additional Four Season Football Tickets (Total of 8)
--Assigned Reserved Parking
--Second Priority on Away and Bowl Game Tickets
--Tickets May Be Assigned to One Designated Heir
--Four Season Basketball Tickets (Best Available)
--Assigned Parking at Coliseum (If Available)
--Second Priority on Away and Tournament Game Tickets
--Second Priority on any Tickets Involving any other South Carolina Athletic Events

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT made this 7th day of March, 1996, by and between George M. Lee III hereinafter referred to as the "Donor" and the University of South Carolina Gamecock Club, hereinafter referred to as the "Gamecock Club".

WITNESSETH:

FOR AND IN CONSIDERATION of the mutual covenants contained herein, the parties do hereby agree as follows:

1. Donor hereby agrees to irrevocably assign and contribute to the Gamecock Club the face amount of a whole life insurance policy valued at a minimum $100,000 with an A+ top 25 company as rated by the "Best Rating System".

2. It is understood and agreed that the University will be the irrevocable owner and sole beneficiary of the policy and that the policy will be the property of the Gamecock Club. The Donor will not retain any benefits under the policy.

3. Donor agrees to pay the annual premium payments of a sum not less than $1,000 on the above described policy to the Gamecock Club for a period of eight (8) years until the policy is paid up at which time the Gamecock Club will own the paid up policy. At this time, the cash value of the policy will continue to pay the premiums throughout the life of the Donor. The Donor shall provide a copy of the policy to the club and will be responsible for any further premiums that might come due on the policy. The Gamecock Club reserves the right to make payments on the policy should the Donor refuse to do so.

EXHIBIT
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4. The University of South Carolina Gamecock Club does hereby acknowledge receipt of said insurance policy and agrees that in exchange for this gift and the agreement by Donor to make all premium payments, Donor will be designated as a Lifetime Scholarship Donor for the eight (8) years he/she is paying on the policy with all the privileges and benefits pertaining thereto as set forth in the attached Exhibit A attached hereto and made a part hereof and the terms of which are incorporated herein by reference. In accordance with said attachment, George D. Lee III will have the opportunity to purchase tickets entitled to the Gamecock Level or membership presently held. There will be no guarantee as to where ticket assignments will be located. Assignments will be made according to membership priority and in accordance with the Gamecock Club By-laws.

5. Upon completion of the eight (8) years, Donor will have an option:

a. Make no further contributions to the Gamecock Club and receive Full Scholarship benefits for the remainder of his/her lifetime. The Donor will revert back to the Full Scholarship inheritance policy of spouse only at this time.

b. Make an annual contribution of $500.00 or more to the Gamecock Club and continue to receive the Lifetime Full Scholarship membership in the Gamecock Club which includes an inheritance of any named heir.

6. In the event the Donor defaults on the payment of the insurance premium to the Gamecock Club, all benefits of the membership including priority in the Gamecock Club to Donor shall be cancelled. In such event, the Gamecock Club shall have the right to cancel the policy or continue to make the premium payments. The Gamecock Club may

also collect and recoup from the Donor the difference between the value of the gift received and of the contribution actually paid.

7. The privileges of this membership will be transferred to his children at present / will designate his estate by will of _____ (Address) upon death of the Donor as long as the Donor remains a Gamecock Club member at the Lifetime Scholarship level. Upon death of the Donor, the family has 90 days to notify the Club and provide a copy of the death certificate. Should the heir of this membership predecease the Donor, the heir of this membership may be re-named.

8. Upon the death of the Donor the proceeds from the insurance policy will be deposited in a Gamecock Club permanent endowment account.

IN WITNESS WHEREOF, George M. Leeds has caused these presents to be duly authorized, and the University of South Carolina Gamecock Club has hereunto set its hand and seal on the date first above written.

DONOR

By: George M. Leeds (L.S.)

Date: 3-9-90

THE UNIVERSITY OF SOUTH CAROLINA

By: _____ (L.S.)
Mr. Thomas L. Stepp
Secretary/Board of Trustees

Date: 4/12/91

By: _____ (L.S.)
A. King Dixon, II
Director of Athletics

Date: 7-9-90

THE UNIVERSITY OF SOUTH CAROLINA
GAMECOCK CLUB

By: Art Baker (L.S.)
Art Baker
Executive Director/Gamecock Club

Date: 6/27/90

000286

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT made this 8th day of MAY, 1986, by and between STUART C HOPE, hereinafter referred to as the "Donor" and the University of South Carolina Gamecock Club, hereinafter referred to as the "Gamecock Club,"

WITNESSETH:

1. Stuart C. Hope has contributed Five Thousand and No/100 Dollars ($5,000) to the University of South Carolina Gamecock Club.

2. Stuart C. Hope has agreed to contribute the additional sum of Twenty Thousand and No/100 Dollars ($20,000) payable in annual installments of Five Thousand and No/100 Dollars ($5,000) beginning in 1987 and ending in 1990 for the privilege of being a Lifetime Scholarship Member of the Gamecock Club with all the benefits appertaining thereto.

3. The University of South Carolina Gamecock Club hereby acknowledges receipt of Five Thousand and No/100 Dollars ($5,000) and agrees that in exchange for the receipt of Five Thousand and No/100 Dollars ($5,000) and the pledge of the additional Twenty Thousand and No/100 Dollars ($20,000) Stuart C. Hope will be designated as a Lifetime Scholarship Donor with all the privileges and benefits pertaining thereto as set forth in the attached Exhibit A attached hereto and made a part hereof and the terms of which are incorporated herein by reference. In accordance with said attachment, Stuart C. Hope will have the opportunity to purchase EIGHT (8) football tickets and four (4) basketball tickets. It is understood and agreed that in the event of death of the beneficiary during the lifetime of the Donor, Donor may change the beneficiary by written amended agreement with the University.

EXHIBIT
tables
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4. The Gamecock Club agrees that the privileges and benefits of this membership will be transferred to MENA HOPE GARDINER, (name) COLUMBIA, SC (address), upon the death of Stuart C. Hope.

5. All funds contributed by Stuart C. Hope under the terms of this agreement shall be deposited in a University permanent endowment account of which only the income derived therefrom may be spent as determined by the USC Gamecock Club.

IN WITNESS WHEREOF Stuart C. Hope has caused these presents to be duly authorized, and the University of South Carolina Gamecock Club has hereunto set its hand and seal on the date first above written.

DONOR

By: _____ (L.S.)
Stuart C. Hope
248-40-5850

Date: _____

THE UNIVERSITY OF SOUTH CAROLINA

By: _____ (L.S.)
J. Steven Beckham
Chief Executive Assistant
to the President

Date: 5/28/86

THE UNIVERSITY OF SOUTH CAROLINA
GAMECOCK CLUB

By: _____ (L.S.)
Chip Clary
Director, Gamecock Club

Date: 4-25-86

000288

EXHIBIT A

LIFETIME SCHOLARSHIP

$25,000-$40,000 (may be pro-rated over a 5 year period)

--Four Season Football Tickets (Best Available).
--Additional Four Season Football Tickets (Total of 8).
--Assigned Reserved Parking.
--Second Priority on Away and Bowl Game Tickets.
--Tickets May Be Assigned to One Designated Heir.
--Four Season Basketball Tickets (Best Available).
--Assigned Reserved Parking at Coliseum (If Available).
--Second Priority on Away and Tournament Game Tickets.
--Second Priority on Any Tickets Involving Any Other South Carolina Athletic Events.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT made this 16th day of March, 1990, by and between JOHN H. LOVE hereinafter referred to as the "Donor" and the University of South Carolina Gamecock Club, hereinafter referred to as the "Gamecock Club".

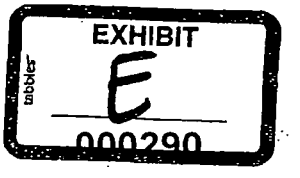
WITNESSETH:

FOR AND IN CONSIDERATION of the mutual covenants contained herein, the parties do hereby agree as follows:

1. Donor hereby agrees to irrevocably assign and contribute to the Gamecock Club the face amount of a whole life insurance policy valued at a minimum $100,000 with an A+ top 25 company as rated by the "Best Rating System".

2. It is understood and agreed that the University will be the irrevocable owner and sole beneficiary of the policy and that the policy will be the property of the Gamecock Club. The Donor will not retain any benefits under the policy.

3. Donor agrees to pay the annual premium payments of a sum not less than $1,000 on the above described policy to the Gamecock Club for a period of eight (8) years until the policy is paid up at which time the Gamecock Club will own the paid up policy. At this time, the cash value of the policy will continue to pay the premiums throughout the life of the Donor. The Donor shall provide a copy of the policy to the club and will be responsible for any further premiums that might come due on the policy. The Gamecock Club reserves the right to make payments on the policy should the Donor refuse to do so.



4. The University of South Carolina Gamecock Club does hereby acknowledge receipt of said insurance policy and agrees that in exchange for this gift and the agreement by Donor to make all premium payments, Donor will be designated as a Lifetime Scholarship Donor for the eight (8) years he/she is paying on the policy with all the privileges and benefits pertaining thereto as set forth in the attached Exhibit A attached hereto and made a part hereof and the terms of which are incorporated herein by reference. In accordance with said attachment, JOHN H. LOVE will have the opportunity to purchase tickets entitled to the Gamecock Level or membership presently held. There will be no guarantee as to where ticket assignments will be located. Assignments will be made according to membership priority and in accordance with the Gamecock Club By-laws.

5. Upon completion of the eight (8) years, Donor will have an option:

a. Make no further contributions to the Gamecock Club and receive Full Scholarship benefits for the remainder of his/her lifetime. The Donor will revert back to the Full Scholarship inheritance policy of spouse only at this time.

b. Make an annual contribution of $500.00 or more to the Gamecock Club and continue to receive the Lifetime Full Scholarship membership in the Gamecock Club which includes an inheritance of any named heir.

6. In the event the Donor defaults on the payment of the insurance premium to the Gamecock Club, all benefits of the membership including priority in the Gamecock Club to Donor shall be cancelled. In such event, the Gamecock Club shall have the right to cancel the policy or continue to make the premium payments. The Gamecock Club may

also collect and recoup from the Donor the difference between the value of the gift received and of the contribution actually paid.

7. The privileges of this membership will be transferred to SUSAN B. LOVE of BURLINGTON N.C. (Address) upon death of the Donor as long as the Donor remains a Gamecock Club member at the Lifetime Scholarship level. Upon death of the Donor, the family has 90 days to notify the Club and provide a copy of the death certificate. Should the heir of this membership predecease the Donor, the heir of this membership may be re-named.

8. Upon the death of the Donor the proceeds from the insurance policy will be deposited in a Gamecock Club permanent endowment account.

IN WITNESS WHEREOF, John H. Love has caused these presents to be duly authorized, and the University of South Carolina Gamecock Club has hereunto set its hand and seal on the date first above written.

DONOR

By: _____ (L.S.)

Date: 3-16-90

THE UNIVERSITY OF SOUTH CAROLINA

By: _____ (L.S.)
Mr. Thomas L. Stepp
Sceretary/Board of Trustees

Date: 4/13/91

By: _____ (L.S.)
A. King Dixon, II
Director of Athletics

Date: 7-9-90

THE UNIVERSITY OF SOUTH CAROLINA
GAMECOCK CLUB

By: _____ (L.S.)
Art Baker
Executive Director/Gamecock Club

Date: 6/29/90

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EXHIBIT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	IN THE FIFTH JUDICIAL CIRCUIT
Linda Rodarte, J. Perry Kimball, George M. Lee, III, Mena H. Gardiner and John Love	)	Civil Action No. 2012-CP040-3924
Plaintiffs,	)	
vs.	)	**SWORN AFFIDAVIT OF GEORGE LEE**
The University of South Carolina and The University of South Carolina Gamecock Club,	)	
Defendants.	)	

I HEREBY SWEAR AND AFFIRM UNDER PENALTY OF PERJURY THAT THE FOLLOWING IS TRUE AND CORRECT TO THE BEST OF MY RECOLLECTION:

1. I, George M. Lee, III, am a competent adult and can testify truthfully.
2. I hereby testify of my own knowledge.
3. On May 9, 1990, I entered into a contract with the defendants whereby I was guaranteed assigned and reserved parking in consideration for becoming a lifetime full scholarship member in the University of South Carolina Gamecock Club ("Gamecock Club").
4. As valued consideration for the same, I contributed $100,000 life insurance policy to the Gamecock Club and made all required payments as per the contract.
5. Since entering the contract, I was given priority parking (spot number 314) and had use of such priority up until the summer of 2012, as guaranteed by my contract with the Gamecock Club.
6. Through the Gamecock Club's actions persons have been given priority ahead of mine and in contravention of my contract rights.

7. I feel such actions on the part of the University of South Carolina through the University's Gamecock Club violate my rights under the contract and disregards the Gamecock Club's past course of dealing, over decades, regarding the assignment of reserved parking.

George M. Lee, III

SWORN to before me this

29th day of August 2018

Notary Public for South Carolina

My Commission Expires September 9, 2021

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT made this 8th day of MAY, 1986, by and between STUART C HOPE, hereinafter referred to as the "Donor" and the University of South Carolina Gamecock Club, hereinafter referred to as the "Gamecock Club,"

WITNESSETH:

1. Stuart C. Hope has contributed Five Thousand and No/100 Dollars ($5,000) to the University of South Carolina Gamecock Club.

2. Stuart C. Hope has agreed to contribute the additional sum of Twenty Thousand and No/100 Dollars ($20,000) payable in annual installments of Five Thousand and No/100 Dollars ($5,000) beginning in 1987 and ending in 1990 for the privilege of being a Lifetime Scholarship Member of the Gamecock Club with all the benefits appertaining thereto.

3. The University of South Carolina Gamecock Club hereby acknowledges receipt of Five Thousand and No/100 Dollars ($5,000) and agrees that in exchange for the receipt of Five Thousand and No/100 Dollars ($5,000) and the pledge of the additional Twenty Thousand and No/100 Dollars ($20,000) Stuart C. Hope will be designated as a Lifetime Scholarship Donor with all the privileges and benefits pertaining thereto as set forth in the attached Exhibit A attached hereto and made a part hereof and the terms of which are incorporated herein by reference. In accordance with said attachment, Stuart C. Hope will have the opportunity to purchase EIGHT (8) football tickets and four (4) basketball tickets. It is understood and agreed that in the event of death of the beneficiary during the lifetime of the Donor, Donor may change the beneficiary by written amended agreement with the University.

4. The Gamecock Club agrees that the privileges and benefits of this membership will be transferred to MENA HOPE GARDINER, (name) COLUMBIA, SC (address), upon the death of Stuart C. Hope.

5. All funds contributed by Stuart C. Hope under the terms of this agreement shall be deposited in a University permanent endowment account of which only the income derived therefrom may be spent as determined by the USC Gamecock Club.

IN WITNESS WHEREOF Stuart C. Hope has caused these presents to be duly authorized, and the University of South Carolina Gamecock Club has hereunto set its hand and seal on the date first above written.

DONOR

By: _____ (L.S.)
Stuart C. Hope
248-40-5850

Date: _____

THE UNIVERSITY OF SOUTH CAROLINA

By: _____ (L.S.)
J. Steven Beckham
Chief Executive Assistant
to the President

Date: 5/28/86

THE UNIVERSITY OF SOUTH CAROLINA
GAMECOCK CLUB

By: _____ (L.S.)
Chip Clary
Director, Gamecock Club

Date: 4-25-86

000297

EXHIBIT A

LIFETIME SCHOLARSHIP

$25,000-$40,000 (may be pro-rated over a 5 year period)

--Four Season Football Tickets (Best Available).
--Additional Four Season Football Tickets (Total of 8).
--Assigned Reserved Parking.
--Second Priority on Away and Bowl Game Tickets.
--Tickets May Be Assigned to One Designated Heir.
--Four Season Basketball Tickets (Best Available).
--Assigned Reserved Parking at Coliseum (If Available).
--Second Priority on Away and Tournament Game Tickets.
--Second Priority on Any Tickets Involving Any Other South Carolina Athletic Events.

ATTACHMENT D
(Email from Harry Gregory dated March 26, 2012 with attachments)

Harry B. Gregory, Jr.

From: Harry B. Gregory, Jr.
Sent: Monday, March 26, 2012 5:27 PM
To: Jeff Crane (crane@sc.edu)
Cc: 'CROMER, MONICA'; 'MCFARLAND, PATRICK'
Attachments: 20120326163144798.pdf; Letter From Gamecock Club - Lifetime Membership - March 5 2008.pdf

Jeff –

Thank you for your call this afternoon. While I disagree with the policy which you indicated would be followed with regard to the assignment of parking, I do appreciate the courtesy of your call.

Though the contracts, as well as prior and subsequent correspondence by and between the University of South Carolina, Gamecock Club, and Life Members, clearly indicate a priority for Life Members separate and apart from the General Membership, you have indicated that you intend to proceed with the assignment of parking solely based on priority points. It defies logic that any reasonable person could read the documentation related to these contracts and take the position that parking was not an important consideration and benefit for those who responded to the University's request to participate in the Life Program. It is blatantly inconsistent to concede priority for tickets and "all athletic events" but not for parking. As for your contention that the contracts do not specifically mention parking, I have attached the solicitation for participation that specifically references "Parking." Similarly, my contract references parking (since I was required to bring you a copy of my contract for purposes of receiving appropriate baseball ticket assignments, I trust you still have a copy of that document). Wyrick's letter specifically states Life Members are at the top of all priority – what do you think that means? What is the reasonable interpretation of that statement?

Most troubling to me, however, is your contention and comment that it "wouldn't be fair" for Life Members to get priority – that takes the discussion to a different level. As someone who has tried to support his alma mater and it's athletic program, I can only say I did what was asked of me. I didn't create the Life Program... I was asked to please join. Since that time, I have met every obligation of my commitment. To now hear an official of the University I care so deeply about suggest that I am somehow being unfair... that is difficult to accept. I am not continually looking for ways to avoid my contractual obligation... I am not trying to cheat the University. Instead, that is how my University is now choosing to treat me. That is an integrity issue. In the time since we talked, there have been several conversations with other Life Members – all of who ask the same questions..."when will take stop trying to get out of the contract?" ... "I thought that had been solved"...."why won't they do the right thing?" It is not the Life Members who are not being fair. It is not the Life Members trying to breach their contracts.

I would respectfully request that the decision regarding the assignment of parking be reconsidered prior to beginning the process of parking selections.

Thank you,

Harry

Limited Offer

Open To First 200 That Qualify

GAMECOCK LIFE

Charitable Giving Through Life Insurance

Be a part of an insured $25,000,000 plus Endowment Program to guarantee the future success of USC Athletics

Insurance Benefits

- Simplified issue life insurance policy
  No health exam, everyone 24-80 eligible to apply
  Through General American Life, an A+ Company
- $100,000 minimum face amount
- $1,000 per year minimum premium
- Policies also available from certain other companies, subject to individual underwriting criteria

Gamecock Club Lifetime Benefits

- Priority on season Football Tickets and Parking
- Pay only 5 to 8 years and choose either 1) pay no more membership donations and receive full scholarship for life or; 2) pay minimum of $500.00 per year and maintain lifetime scholarship priority.
- Tax-Deductible Premiums
- Can bequeath these member benefits to an heir

FOR MORE INFORMATION:

GIBSON, WALKER & STEWART BENEFITS, INC.
1-803-254-1832

or

THE GAMECOCK CLUB
1-803-777-4276

UNIVERSITY OF SOUTH CAROLINA

March 5, 2008

Dear Lifetime Member:

I realize that over the past twelve months there has been discussion among Life Members as to the honoring of contracts, priority points, and other concerns. Hopefully, the information to follow will put an end to any questions that remain and allow us to move forward together. As in the past, a Life Member of the Gamecock Club can expect:

- Life Members are divided into two categories: Lifetime Silver Spurs and Lifetime Full Scholarship
- Lifetime Silver Spurs precede Lifetime Full Scholarships in the Lifetime priority
- Life Members are at the top of all Gamecock Club priority
- The categories of Lifetime Silver Spur and Lifetime Full Scholarship are closed
- Non-insurance lifetime members will receive priority points for the original amount given plus any additional gifts to the Gamecock Club
- Insurance (Gamecock Life) donors will receive priority points based on the face value of the insurance policy gifted to the Gamecock Club e.g. a $100,000 policy yields 1000 priority points plus any additional gifts given
- Lifetime members also enjoy top priority for away football game, men's basketball and bowl game tickets

I would like to thank all Lifetime members personally for their generous support. To that end, you are invited to join me and members of the Gamecock Club staff for a reception prior to the USC baseball game against the College of Charleston on March 26; an invitation to this event is attached. Thanks again for your loyal and generous support of the Gamecocks. I look forward to seeing you on March 26th at the "Sarge".

Go Gamecocks.

Chris Wyrick
Executive Director
The Gamecock Club

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT made this 11th day of March, 19[illegible], by and between [illegible] hereinafter referred to as the "Donor" and the University of South Carolina Gamecock Club, hereinafter referred to as the "Gamecock Club".

WITNESSETH:

FOR AND IN CONSIDERATION of the mutual covenants contained herein, the parties do hereby agree as follows:

1. Donor hereby agrees to irrevocably assign and contribute to the Gamecock Club the face amount of a whole life insurance policy valued at a minimum $100,000 with an A+ top 25 company as rated by the "Best Rating System".

2. It is understood and agreed that the University will be the irrevocable owner and sole beneficiary of the policy and that the policy will be the property of the Gamecock Club. The Donor will not retain any benefits under the policy.

3. Donor agrees to pay the annual premium payments of a sum not less than $1,000 on the above described policy to the Gamecock Club for a period of eight (8) years until the policy is paid up at which time the Gamecock Club will own the paid up policy. At this time, the cash value of the policy will continue to pay the premiums throughout the life of the Donor. The Donor shall provide a copy of the policy to the club and will be responsible for any further premiums that might come due on the policy. The Gamecock Club reserves the right to make payments on the policy should the Donor refuse to do so.

8042-A-005

4. The University of South Carolina Gamecock Club does hereby acknowledge receipt of said insurance policy and agrees that in exchange for this gift and the agreement by Donor to make all premium payments, Donor will be designated as a Lifetime Scholarship Donor for the eight (8) years he/she is paying on the policy with all the privileges and benefits pertaining thereto as set forth in the attached Exhibit A attached hereto and made a part hereof and the terms of which are incorporated herein by reference. In accordance with said attachment, [illegible] will have the opportunity to purchase tickets entitled to the Gamecock Level or membership presently held. There will be no guarantee as to where ticket assignments will be located. Assignments will be made according to membership priority and in accordance with the Gamecock Club By-laws.

5. Upon completion of the eight (8) years, Donor will have an option:

a. Make no further contributions to the Gamecock Club and receive Full Scholarship benefits for the remainder of his/her lifetime. The Donor will revert back to the Full Scholarship inheritance policy of spouse only at this time.

b. Make an annual contribution of $500.00 or more to the Gamecock Club and continue to receive the Lifetime Full Scholarship membership in the Gamecock Club which includes an inheritance of any named heir.

6. In the event the Donor defaults on the payment of the insurance premium to the Gamecock Club, all benefits of the membership including priority in the Gamecock Club to Donor shall be cancelled. In such event, the Gamecock Club shall have the right to cancel the policy or continue to make the premium payments. The Gamecock Club may

also collect and recoup from the Donor the difference between the value of the gift received and of the contribution actually paid.

7. The privileges of this membership will be transferred to [illegible] of [illegible] (Address) upon death of the Donor as long as the Donor remains a Gamecock Club member at the Lifetime Scholarship level. Upon death of the Donor, the family has 90 days to notify the Club and provide a copy of the death certificate. Should the heir of this membership predecease the Donor, the heir of this membership may be re-named.

8. Upon the death of the Donor the proceeds from the insurance policy will be deposited in a Gamecock Club permanent endowment account.

IN WITNESS WHEREOF, George M. Lee III has caused these presents to be duly authorized, and the University of South Carolina Gamecock Club has hereunto set its hand and seal on the date first above written.

DONOR

By: George M. Lee III (L.S.)

Date: 3-9-90

THE UNIVERSITY OF SOUTH CAROLINA

By: [signature] (L.S.)
Mr. Thomas L. Stepp
Sceretary/Board of Trustees

Date: 4/17/191

By: [signature] (L.S.)
A. King Dixon, II
Director of Athletics

Date: 7-9-90

THE UNIVERSITY OF SOUTH CAROLINA
GAMECOCK CLUB

By: Art Baker (L.S.)
Art Baker
Executive Director/Gamecock Club

Date: 6/27/90

8042-A-007

000305

EXHIBIT A

LIFETIME FULL SCHOLARSHIP

--Four Season Football Tickets (Best Available)
--Additional Four Season Football Tickets (Total of 8)
--Assigned Reserved Parking
--Second Priority on Away and Bowl Game Tickets
--Tickets May Be Assigned to One Designated Heir
--Four Season Basketball Tickets (Best Available)
--Assigned Parking at Coliseum (If Available)
--Second Priority on Away and Tournament Game Tickets
--Second Priority on any Tickets Involving any other South Carolina Athletic Events

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	CASE NUMBER: 2012-CP-40-3931
Gorden H. Timmons, Patricia A. Timmons. Amy M. Timmons now known as Amy M. Mahoney and Amanda E. Timmons,	)	
Plaintiffs,	)	
vs.	)	
The University of South Carolina and The University of South Carolina Gamecock Club,	)	
Defendants.	)	

PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Plaintiffs hereby respectfully submit this Memorandum of Law in Opposition to Plaintiffs' Motion for Summary Judgment as numerous genuine issues of material fact exist in this matter.

FACTS

In 1986, Plaintiffs Gorden H. Timmons and Patricia A. Timmons, alumni of the University, were "Silver Spur" donors to The Gamecock Club. The "Silver Spur" donor designation was the highest level of contribution to The Gamecock Club which then existed. Pursuant to a contract then existing between said Plaintiffs and the University in order to be entitled to the rights, privileges and benefits of a "Silver Spur" donor a donor had to make an annual contribution of$2,500 and in exchange therefor a "Silver Spur" donor received the following rights, privileges and benefits:

--Four Season Football Tickets (Best Available). First Priority.

--Additional Four Season Football Tickets. Second Priority. (Total of 8)

--Assigned Reserved Parking

--First Priority on A way and Bowl Game Tickets.

--Four Season Basketball Tickets (Best Available)

--Assigned Parking at the Coliseum (if Available) or Parking pass in Park Street Lot.

--First Priority on Away or Tournament Game Tickets

--First Priority on any tickets involving any other South Carolina Athletic Events.

At the end of 1986, Plaintiffs, Gorden H. Timmons and Patricia A. Timmons, received a color brochure from The Gamecock Club, a purpose of which was to solicit contributions for The Gamecock Club. A portion of the said brochure is attached hereto as **Exhibit "A"** and incorporated herein by reference. The said brochure created two new levels of contributions, the "Lifetime Silver Spur" and the "Lifetime Scholarship." "Lifetime Silver Spur" rights, privileges and benefits were granted to a donor who contributed $40,000 or more (may be pro-rated over a 5-year period). "Lifetime Silver Spur" rights, privileges and benefits were:

--Four Season Football Tickets (Best Available). First Priority.

--Additional Four Season Football Tickets. Second Priority. (Total of 8)

--Assigned Reserved Parking.

--First Priority on Away and Bowl Game Tickets.

--Tickets may be assigned to one designated heir.

--Four Season Basketball Tickets (Best Available).

--Assigned Parking at the Coliseum (If Available).

--First Priority on A way or Tournament Game Tickets.

--First Priority on any tickets involving any other South Carolina Athletic Events.

"Lifetime Scholarship"rights, privileges and benefits were granted to a donor who contributed $25,000 to $40,000 (may be pro-rated over a 5-year period). "Lifetime Scholarship" rights, privileges and benefits were:

--Four Season Football Tickets (Best Available). First Priority.

--Additional Four Season Football Tickets. Second Priority. (Total of 8)

--Assigned Reserved Parking.

--Second Priority on A way and Bowl Game Tickets.

--Tickets may be assigned to one designated heir.

--Four Season Basketball Tickets (Best Available).

--Assigned Parking at the Coliseum (If Available).

--Second Priority on Away or Tournament Game Tickets.

-Second Priority on any tickets involving any other South Carolina Athletic Events.

Upon receipt of the University's solicitation Plaintiffs Gorden H. Timmons and Patricia A. Timmons became interested in the lifetime donor program in large part because of three attributes of the program: (A) the priority tickets could be assigned to a designated heir (this was important because Plaintiffs intended for their children to attend the University and this in fact took place); (B) no further donations or other payments (other than the actual cost of event tickets) were required in order to assure the priority rights, privileges and benefits tied to the contribution; and (C) the guaranteed reserved assigned parking space would give Plaintiffs convenient access to the sporting events, in event of their possible disability or in their elderly years.

On or about February 7, 1987 Plaintiff Gorden H. Timmons met with Mr. Clary in reference to Mr. Timmons becoming a "Lifetime Silver Spur". Following said meeting, on February 7, 1987, Mr. Timmons confirmed in writing the specific terms of the agreement reached between Mr.

Timmons and the University. The agreement was that:

--If during the next five years should business conditions change so that Mr. Timmons was unable to complete the $40,000 contribution, however had contributed at least $25,000, that Mr. Timmons would at least be a Lifetime Scholarship donor..

--Mr. Timmons membership benefits and privileges were transferable to his two daughters as heirs - those being the Plaintiffs Amanda E. Timmons and Plaintiff Amy Timmons now known as Amy Mahoney.

--Mr. Timmons current four tickets in Section 410 and four tickets in Section 505 and the reserved parking in Space 779 at the stadium which Mr. Timmons had for many years would not change.

--In the event of a sale of Mr. Timmons company the ownership of the membership would be transferred from Mr. Timmons company to Mr. Timmons.

The aforesaid terms of the agreement relative to Mr. Timmons' were specific as to Mr. Timmons, and not part of the standard agreements entered into by other donors.

Mr. Timmons sent a letter to Mr. Clary confirming the above agreement along with a check for $1 0,000 as his first installment, a copy of the letter and check are attached hereto as **Exhibit "B"** and incorporated herein by reference. Upon receipt of the letter setting forth Mr. Timmons understanding of the parties agreement, the University cashed the donation check.

On or about February 17, 1987 Plaintiffs and the University entered into the Memorandum of Agreement which is attached hereto as **Exhibit "C"**. The terms of the said contract are as set forth in **Exhibit "B" and Exhibit "C"** Attached to the said Memorandum of Agreement is an Exhibit "A" which sets forth the "privileges and benefits" pertaining to a "Lifetime Silver Spur Donor," as

follows:

--Four season football tickets (best available).

--Additional four season football tickets (total of 8).

--Assigned reserved parking.

--First priority on away and bowl game tickets.

--Tickets may be assigned to one designated heir.

--Four season basketball tickets (best available).

--Assigned reserved parking at Coliseum (if available).

--First priority on away and tournament game tickets.

--First priority on any tickets involving any other South Carolina athletic event.

It is particularly relevant that this Memorandum of Agreement contained no merger clause stating that the Memorandum of Agreement was the entire agreement of the parties and that all prior negotiations were merged into the subsequent writing.

Pursuant to the agreement confirmed by Mr. Timmons letter of February 7, 1987 the University then acted in conformance with the letter as follows:

1. On or about August 1, 1991, pursuant to the contract of the parties, Plaintiffs changed the status of their membership from a "Lifetime Silver Spur" to a "Lifetime Scholarship".

2. Mr. Timmons sold his company, and in accordance with the terms of the letter, the University transferred ownership of the contract rights to Mr. Timmons personally.

3. For 25 years Mr. Timmons has had his current four tickets in Section 410.

4. For 25 years Mr. Timmons had his assigned reserved parking in Space 779 (until May 2012, just before this action was filed).

On or about December 4, 2010 the University failed to give Plaintiffs their second priority seating relative to the Southeastern Conference Championship Game in Atlanta, Georgia. Plaintiffs were seated in the "nose bleed" seats next to the band, rather than having been accorded their second priority for seating which should have been behind only the 35 Lifetime Silver Donors.

For away games and bowl games and post season play priority is now based strictly upon a new "point system" based primarily on financial contributions thereby depriving Lifetime Scholarship Donors of their contractual entitlement to second priority behind only the 35 Lifetime Silver Donors. Based on strictly points, a new donor can be placed ahead of Lifetime Scholarship Donors.

On or about December 21,2010 Plaintiffs Gorden Timmons and Amy Mahoney met with Mr. Patrick McFarland and Jack Wilson at the offices of the Gamecock Club. Mr. McFarland stated the reason Mr. Timmons had received the bad seats at the Southeastern Conference Championship was because the University had adopted a new priority points and ranking system. Following this meeting Mr. McFarland stated he would look into Plaintiffs' concern that their status as Lifetime Scholarship donors would be upheld pursuant to the contract between Plaintiffs and the University - regardless of the new point system. Mr. McFarland represented to Plaintiffs that the issue of how to honor the contractual status of Lifetime Donors would be placed on the agenda of the annual Gamecock Club Board of Director's meeting.

On or about December 31, 2010 the University failed to give Plaintiffs their second priority seating relative to the Chick-fil-A Bowl in Atlanta, Georgia. Plaintiffs were seated in the "nose bleed" seats next to the band, rather than having been accorded their second priority for seating which should have been behind only the 35 Lifetime Silver Donors.

On or about June 14,2011 the University failed to give Plaintiffs their second priority seating

relative to the NCAA College World Series in Omaha, Nebraska, which should have been behind only the 35 Lifetime Silver Donors.

According to the new priority points and ranking system recently adopted for the allocation of away game tickets, post-season tickets and home parking passes, Gamecock Club members are ranked by points only as appears from **Exhibit "D"** which describes the new priority points and ranking system.

The application of the new priority points and ranking system to Plaintiffs, the 35 other Lifetime Silver Spur and the other 192 Lifetime Scholarship Donors, breaches the contracts entered into with said Donors in the following respects:

(A) The new priority points and ranking system deprives Plaintiffs of their priority on away game, bowl game and other athletic events in that without the requirement of making further donations Lifetime Silver Spur Donors were to be the first 35 to receive those tickets and the 192 Lifetime Scholarship Donors were to receive their tickets thereafter; and,

(B) The new priority points and ranking system deprives Plaintiffs of their specifically agreed upon assigned reserved parking in Space 779 in the shadows of the stadium without providing comparable parking space in the Premium North or Premium South VIP section of the Farmer's Market Parking Area

(C) The University has breached its contract with the Plaintiffs and the other Lifetime Silver Spur and Lifetime Scholarship Donors by charging them for assigned reserved parking and for seat licenses.

As stated, Plaintiff, as a Lifetime Silver Spur Donor, was to receive "Assigned reserved parking." Those words were not defined in the contract. Hence, those words require definition by reference to extrinsic documents. On February 7, 1987, at time Plaintiff tendered the first $10,000

installment of his donation (and before Memorandum of Agreement was executed), Plaintiff confirmed in writing his agreement with The Gamecock Club that Plaintiff s "current tickets in the scholarship section and parking which [Plaintiff] had for many years will not change." See, **Exhibit "B".** Defendants then accepted the donation, cashed the check and issued the Memorandum of Agreement. The letter, which confirmed the parties agreement, is extrinsic evidence of what was meant by the words "Assigned reserved parking." In addition, the same letter granted Plaintiff the right to his current seat locations, the right to assign ownership of the lifetime rights from Plaintiff's company to Plaintiff, and the right to be either a Lifetime Silver Spur Donor or a Lifetime Scholarship Donor level based on his business conditions. In regards to seat location, the Memorandum of Agreement provided "Four Season Football Tickets (Best Available). First Priority." Again, these words required definition by reference to extrinsic documents - that being the letter sent by Plaintiff before the parties entered into the Memorandum of Agreement. Defendant honored the seat location, change of ownership and scholarship level adjustment provisions contained in the said letter, but have now breached the assigned reserved parking agreement. Thus, the letter was clearly part of the agreement between Plaintiff and Defendants. Further, the actual conduct of the parties is the best evidence of the intent of their agreement and that conduct clearly establishes that the terms of the Memorandum of Agreement are explained by the letter.

Upon information and belief, the University has devised a landscape plan to eliminate all parking on the stadium grounds. The plan would eliminate Space 779. Plaintiff Patricia Timmons was seriously injured and has disabilities as a result of an accident. For this reason Plaintiffs have diligently pursued this meritorious action to enforce their contract with the Defendants the terms of which gave the Plaintiffs assigned reserved parking in Space 779. With this in mind, on or about

March 20, 2012 Mr. Timmons met with Mr. McFarland for the purpose of agreeing upon comparable parking to Space 779 in the Premium North or Premium South VIP section of the Farmer's Market Parking Area. Mr. McFarland took Mr. Timmons to the parking area and allowed Mr. Timmons to pick out his new assigned reserved parking. Mr. McFarland informed Mr. Timmons he was entitled to select 2 assigned reserved parking spaces since Mr. Timmons held 8 season tickets. With Mr. McFarland present Mr. Timmons picked out 2 parking spaces that backed up to the large trees in the VIP North lot. Mr. McFarland assured Mr. Timmons he would receive said parking spaces. Mr. McFarland instructed Mr. Timmons to come meet with the parking director on May 28, 2012 so that the selected parking spaces could be formally assigned to Mr. Timmons. On or about May 28,2012 Mr. McFarland told Mr. Timmons that parking spaces would be assigned based upon the new priority points and ranking system and that Mr. Timmons would be given a time slot based upon the University's computerized selection process which was scheduled to start on June 11, 2012 at 11 :55 a.m. During the selection process someone is scheduled every 3 minutes during working hours. Mr. Timmons' selection time was Wednesday, June 13,2012 at 3:05 p.m. There are less than 400 spots in the VIP sections. By way of application of the new point system Mr. Timmon's parking space is now a great distance from the stadium, rather than in its agreed upon location (or at least a comparable location). See, **Exhibit** "E" hereto which shows the location of Space 779 vs. the location of the current parking which is now on the Farmer's Market grounds.

The application of the new priority points and ranking system to the allocation of assigned reserved parking deprives Plaintiffs of their assigned reserved parking in Space 779 in violation of the contract between Plaintiffs and the University.

LEGAL ARGUMENT

Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories,

and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). Moreover, since it is a drastic remedy, summary judgment should be cautiously invoked so that a litigant will not be improperly deprived of a trial on disputed factual issues. Conner v. City of Forest Acres, 348 S.C. 454, 560 S.E.2d 606 (2002). The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Baugus v. Wessinger, 303 S.C. 412, 401 S.E.2d 169 (1991).

As used in Exhibit A to the "Memorandum of Agreement", drafted by the University and Gamecock Club, the term "assigned reserved parking" is patently ambiguous. It is the Plaintiffs' position that the term "assigned" refers to the Timmons' previously assigned parking spot prior to entering into the Lifetime Membership contract with the Gamecock Club. Defendants dispute this position. "A contract is ambiguous when the terms of the contract are reasonably susceptible of more than one interpretation. *Hawkins v. Greenwood Development Corp.*, 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct.App.1997) (*citing* 17A Am.Jur.2d Contracts § 338, at 345 (1991)). It is a question of law for the court whether the language of a contract is ambiguous. *Id.* Once the court decides the language is ambiguous, evidence may be admitted to show the intent of the parties. *Id.* The determination of the parties' intent is then a question of fact. *Id.*" S. Carolina Dep't of Natural Res. v. Town of McClellanville, 345 S.C. 617, 623, 550 S.E.2d 299, 302-03 (2001). "A contract is ambiguous when it is capable of more than one meaning or when its meaning is unclear." *Ellie* at

94, 594 S.E.2d at 493; *accord Bruce* at 160, 127 S.E.2d at 441; *Hawkins v. Greenwood Dev. Corp.*, 328 S.C. 585, 493 S.E.2d 875 (Ct.App.1997). "[A]n ambiguous contract is one capable of being understood in more senses than one, an agreement obscure in meaning, through indefiniteness of expression, or having a double meaning." *Carolina Ceramics, Inc. v. Carolina Pipeline Co.*, 251 S.C. 151, 155-56, 161 S.E.2d 179, 181 (1968) (citation omitted) Ecclesiastes Prod. Ministries v. Outparcel Associates, LLC, 649 S.E.2d 494, 502 (Ct. App. 2007). Here, Mr. Timmons had the foresight to address this potential issue back in 1987 when he confirmed the terms agreed to in his meeting with Chip Clary by way of the February 7, 1987 letter, attached hereto as **Exhibit "B"**. Although Defendants now try to redefine the true meaning of the otherwise ambiguous term of "assigned reserved parking", the February 7, 1987 letter leaves no question what the intent of the parties was at the time of entering into the contract.

Furthermore, any question as to the ambiguity of this term should be construed in favor of Plaintiffs. "Ambiguous language in a contract should be construed liberally and most strongly in favor of the party who did not write or prepare the contract and is not responsible for the ambiguity; and any ambiguity in a contract, doubt, or uncertainty as to its meaning should be resolved against the party who prepared the contract or is responsible for the verbiage." *Myrtle Beach Lumber Co., Inc. v. Willoughby*, 276 S.C. 3, 8, 274 S.E.2d 423, 426 (1981) (quoting 17A C.J.S. *Contracts 324)* Id. It is undisputed that Mr. Timmons did not draft the Lifetime Membership contract. The contract was drafted by the University and Gamecock Club. As Defendants drafted the contract, they failed to include any sort of a merger clause or indication that the "Memorandum of Agreement" served as the entire agreement between the parties. Thus, any resulting ambiguity should be construed against the drafters of that document, Defendants University of South Carolina and Gamecock Club.

Additionally, in this contract, as in any other contract, there exists a duty of good faith and fair dealing. [T]here exists in every contract an implied covenant of good faith and fair dealing." *Commercial Credit Corp. v. Nelson Motors, Inc.*, 247 S.C. 360, 366-67, 147 S.E.2d 481, 484 (1966). Williams v. Riedman, 339 S.C. 251, 267, 529 S.E.2d 28, 36 (Ct. App. 2000). Defendants take the position that they are no longer able to provide the Timmons with on-stadium parking space 779, and therefore, Plaintiffs should be content with the new parking spot they have been assigned, a half a mile from their previous parking space. Contrary to the position taken by Defendants, there is no impossibility of performance here. The decision to change the parking situation on the stadium grounds was entirely a decision made by Defendants. If the University is no longer willing to honor its agreement with the Timmons for their assigned reserved parking space, it should provide the Timmons with a comparable space, of comparable proximity to Williams Brice stadium, not an unpaved space on the other side of Bluff Road, approximately one half mile from the Timmons previous parking space. To argue that by deciding to move the Timmons' parking spot one half mile away after 25 years, while placing new donors in the newly created priority parking is a violation of the covenant of good faith. This not only violates the contract with the Timmons, but also the covenant of good faith and fair dealing existing in all contracts made in this state.

Ultimately, it is the intent of the parties at the time of entering into the agreement which controls how the ambiguous terms should be construed and it is the parties' intent which a court should look to in attempting to ascertain the meaning of those ambiguous terms. "[W]hen an agreement is susceptible of more than one interpretation, it is ambiguous and the court should seek to determine the intent of the parties." *Davis*, 641 S.E.2d at 452; *Estate of Revis*, 484 S.E.2d at 116. Nicholson v. Nicholson, 663 S.E.2d 74, 79 (Ct. App. 2008) [I]t is the general rule that parol

evidence is admissible to show the true meaning of an ambiguous written contract.... The courts, in attempting to ascertain [the parties'] intention, will endeavor to determine the situation of the parties, as well as their purposes, at the time the contract was entered into. *Bruce v. Blalock*, S.E.2d 439 (1962). The court should put itself, as best it can, in the same position occupied by the parties when they made the contract. In doing so, the court is able to avail itself of the same light which the parties possessed when the agreement was entered into so that it may judge the meaning of the words and the correct application of the language. 17 Am.Jur.2d, *Contracts § 272 (1964).* Nicholson at 80. Here, before accepting Mr. Timmons' $10,000 check and his executed signature page, the Gamecock Club received his letter confirming the meaning of "assigned reserved parking". This is the best evidence as to the intent of the parties at the time of entering into the contract. To come back some 25 years after the fact and attempt to twist the meaning of "assigned reserved parking" to mean anything other than the parking the Timmons' had at the time of entering into the contract (or, at minimum, comparable parking), would be unjust and deny the Timmons the benefit of their bargain. Plaintiffs have presented a writing, the February 7, 1987 letter, attached as **Exhibit "B"**, which was part of the parties agreement. Hence, the determination of the meaning of "assigned reserved parking" does not rest on verbal discussions, but rather is premised upon a contemporaneous writing. Ultimately, it is clear the Timmons entered into the Lifetime Contract and tendered the lump sum payment to the University and Gamecock club because Mr. and Mrs. Timmons wanted to preserve the seats and parking priority they had for their older years and to pass on to their children to enjoy after they are gone. As it was Defendants who drafted the contract containing the disputed ambiguous terms, any interpretation of those ambiguous terms should be construed against the drafter of the contract.

CONCLUSION

Defendants have provided no sworn testimony by way of affidavit from any party involved in the making of this contract as to the intent of the parties at the time the agreement was entered into. Neither the affidavit of Lance Grantham nor the affidavit of Jeff Crane address the issue of assigned reserved parking. Defendants provided no sworn testimony by way of affidavit from any individual involved in the entering into of the agreement between the Timmons and the University as to the intent of the parties at the time. Defendants have designated Mr. Chip Clary as a witness. Mr. Clary represented the Gamecock Club in the negotiation of the agreement with Mr. Timmons. Interestingly, Defendants have failed to provide an affidavit from Mr. Clary which either explains the meaning of assigned reserved parking or disputes Mr. Timmons position that letter Mr. Timmons wrote to Mr. Clary contemporaneous with the execution of the Memorandum of Agreement was part of the parties agreement. As the drafters of the agreement, any inferences as to the meaning of the ambiguous term "assigned reserved parking" should be construed against the documents drafters. Furthermore, as genuine issues of material fact exist in this case, summary judgment is inappropriate at this time and Defendants' motion should be denied.

THE MASON LAW FIRM, P.A.

BY: _____

MARK A. MASON
SALAH H. HIBRI
Tidewatch Centre on Shem Creek
465 W. Coleman Boulevard, Suite 302
Mount Pleasant, S.C. 29464
Telephone: (843) 884-1444
Facsimile: (843) 884-3595
E-mail: mark@masonlawfirm.com
salah@masonlawfirm.com

Attorneys for Plaintiffs

June 5, 2013
Mount Pleasant, South Carolina

CERTIFICATE OF SERVICE

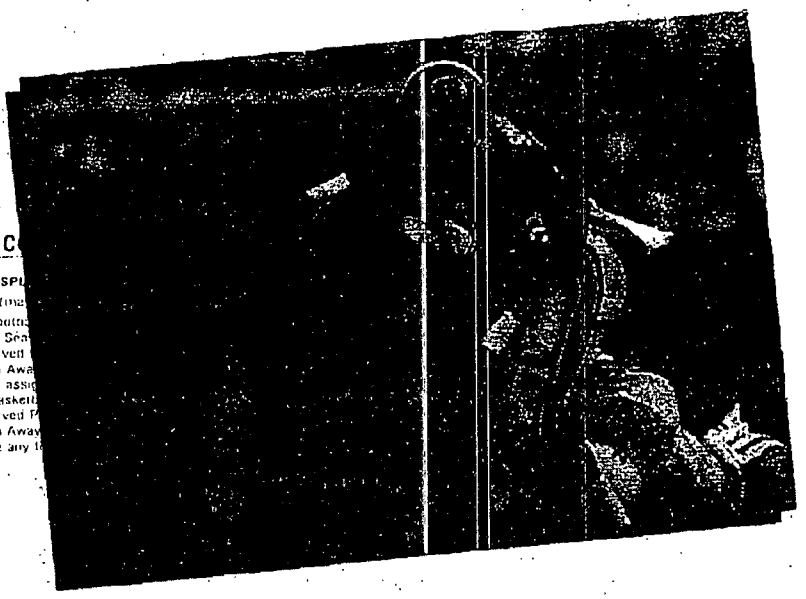
The undersigned hereby certifies that the pleading or paper to which this certificate is affixed was served upon the party(ies) to this action by hand, or by depositing a copy of the same in the U.S. Mail, first class postage pre-paid and addressed to the proper attorney(s) of record for such other party(ies) on this, the 5th day of June, 2013, in Mount Pleasant, South Carolina.

THE MASON LAW FIRM, P.A.

BY: _____

EXH B T A

I I



LEVELS OF C

LIFETIME SILVER SPL

$40,000 or more (ma

- Four Season Footb
- Additional Four Sea
- Assigned Reserved
- First priority on Awa
- Tickets may be assi
- Four Season Basket
- Assigned Reserved P
- First priority on Away
- First priority on any

LIFETIME SCHOLARSHIP

$20,000-$40,000 (may be pro-rated over a 5-year period)

- Four Season Football Tickets (Best Available). First Priority.
- Additional Four Season Football Tickets. Second Priority. (Total of 8)
- Assignee Reserved Parking.
- Second priority on Away and Bowl Game Tickets.
- Tickets may be assigned to one designated heir.
- Four Season Basketball Tickets (Best Available).
- Assigned Reserved Parking at Coliseum (If Available).
- Second priority on Away and Tournament Game Tickets.
- Second priority on any tickets involving any other South Carolina Athletic Events.

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FULL SCHOLARSHIP

$1,000 Annual Contribution

- Four Season Football Tickets (Best Available). First Priority.
- Additional Four Season Football Tickets. Second Priority. (Total of 8)
- Assigned Reserved Parking.
- Fourth priority on Away and Bowl Game Tickets.
- Four Season Basketball Tickets (Best Available).
- Parking Pass (Park Street Lot).
- Fourth priority on Away and Tournament Game Tickets.
- Fourth priority on any tickets involving other South Carolina Athletic Events.

HALF SCHOLARSHIP

$500 Annual Contribution

- Four Season Football Tickets (Best Available). First Priority.
- Additional Two Season Football Tickets (Best Available). Second Priority (Total of 6)
- Parking Pass — Half Scholarship Area — General Parking.
- Fifth priority on Away and Bowl Game Tickets.
- Four Season Basketball Tickets (Best Available).
- Fifth priority on Away and Tournament Game Tickets.
- Fifth priority on any tickets involving other South Carolina Athletic Events.

ROUNDHOUSE

$250 Annual Contribution

- Four Season Football Tickets (If Available).
- Parking Pass in Roundhouse Area on first come first serve basis, limited space.
- Sixth priority on Away and Bowl Game Tickets.
- Two Season Basketball Tickets (Best Available).
- Sixth priority on any tickets involving other South Carolina Athletic Events.

CENTURY

$100 Annual Contribution

- Two Season Football Tickets (If Available).
- Seventh priority on Away and Bowl Game Tickets.
- Two Season Basketball Tickets (Best Available).
- Seventh priority on any tickets involving other South Carolina Athletic Events.

* Current Century Club members with four season football tickets will maintain priority on those seats.
* First year USC Graduates are offered a one-year honorary membership in the Century Club

BOOST

$50 Annual Contribution

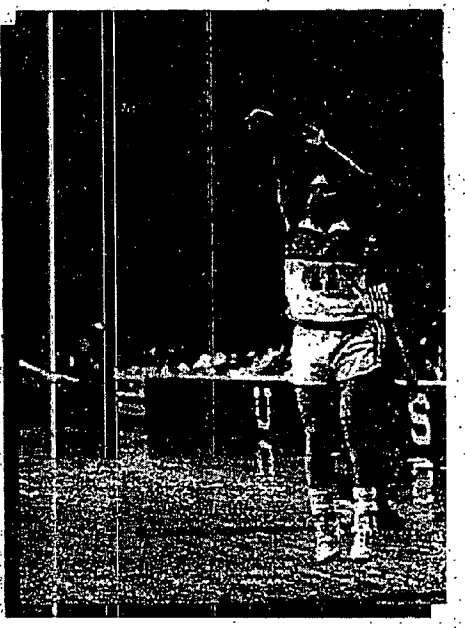
- Football Tickets not available.
- Basketball Tickets not available.

SILVER SPUR

$2,500 Annual Contribution

- Four Season Football Tickets (Best Available) First Priority
- Additional Four Season Football Tickets Second Priority (Total of 8)
- Assigned Reserved Parking.
- Third priority on Away and Bowl Game Tickets
- Four Season Basketball Tickets (Best Available)
- Assigned Pa
- Third prio
- Third prio





000325

EXHIBIT B

Atlas Electric Co., Inc.

P.O. BOX 90089 — CHARLESTON, S. C. 29410
7258 SPA ROAD — SPA INDUSTRIAL PARK
NORTH CHARLESTON, S. C. 29418
803-572-3410

February 7, 1987

The Gamecock Club
Columbia, SC 29201

ATTN: Chip Clary

Dear Chip,

It was a pleasure talking with you today in reference to a lifetime Silver Spur. You indicated that during the next five years should business conditions change so that we are unable to complete the $40,000.00 contribution, however had contributed at least $25,000.00, that it would at least be a lifetime scholarship donor.

The lifetime Silver Spur is transferable to my two daughters as heirs. They are Amanda Elizabeth Timmons SSN# [redacted] and Amy Elizabeth Timmons SSN# [redacted] I need for my Social Security number to be used for the lifetime Silver Spur so that in case of a sale of my company that the ownership would be mine.

I must emphasize that my current tickets in the scholarship section and parking which I have had for many years will not change. However I would like for my four additional tickets to be moved down under cover if not next to my other seats.

I am enclosing a check for $10,000.00 as our first installment. Please have Jim Petrus call me in reference to advertising in the programs.

Sincerley,

Gorden H. Timmons

Gorden H. Timmons
President

GHT/cg

ATLAS ELECTRIC CO., INC. CHARLESTON, SC 29410

VENDOR # 00963 No. 20070

INVOICE NUMBER	INVOICE DATE	VOUCHER NO	PARTIAL	GROSS AMOUNT	DISCOUNT AMOUNT	NET AMOUNT
SILVER SPUR	2/09/87			10000.00		10000.00
			TOTAL AMOUNTS	10,000.00	.00	10,000.00

ATLAS ELECTRIC CO., INC.
P.O. BOX 90089
CHARLESTON, SC 29410
803 / 572-3410

FIRST CITIZENS BANK & TRUST CO.
CHARLESTON, SC
67-148
532

No. 20070

2/09/87

PAY THE AMOUNT OF

TOTAL AMOUNT
$10,000.00

TEN THOUSAND ********** AND NO/100 DOLLARS

TO THE ORDER OF: GAMECOCK CLUB USC
UNIVERSITY OF S.C.

COLUMBIA, S.C. 29208

NON-NEGOTIABLE

000328

EXHIBIT C

UNIVERSITY OF SOUTH CAROLINA

Rosewood Drive
Columbia, S.C. 29208

803-777-4276

GAMECOCK CLUB

Gordon Timmons

March 9, 1987

Booster #214106

Atlas Electric Co., Inc.
Mr. Gordon H. Timmons
3290 Ashley Phosphate Rd.
North Charleston, SC 29418

Dear Mr. ,

Enclosed please find your copy of the fully executed Lifetime Silver Spur Agreement with all the necessary signatures. If you have any questions or need any additional information please do not hesitate in contacting me.

Thank you again for your fine support of Carolina Athletics.

Sincerely,

Chip Clary
Director

CC/kcs

Enclosure

Patrick McFaddenl
10/7/2010

000330

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT made this 17 day of Feb., 1987, by and between Atlas Electric Company, c/o Gordon H. Timmons, hereinafter referred to as the "Donor" and the University of South Carolina Gamecock Club, hereinafter referred to as the "Gamecock Club".

WITNESSETH:

FOR AND IN CONSIDERATION of the mutual covenants contained herein, the parties do hereby agree as follows:

1. Donor has contributed Ten Thousand and No/100 Dollars ($10,000) to the Gamecock Club .

2. Donor has agreed to contribute the additional sum of Thirty Thousand and No/100 Dollars ($30,000) payable in annual installments of Six Thousand and No/100 Dollars ($6,000) beginning in 1988 and ending in 1992 for the privilege of being a Lifetime Silver Spur Member of the Gamecock Club with all benefits appertaining thereto.

3. The Gamecock Club hereby acknowledges receipt of Ten Thousand and No/100 Dollars ($10,000) and agrees that in exchange of the receipt of Ten Thousand and No/100 Dollars ($10,000) and the pledge for the additional Thirty Thousand and No/100 Dollars ($30,000), Donor will be designated as a Lifetime Silver Spur Donor with all the privileges and benefits pertaining thereto as set forth in the attached Exhibit A, attached hereto and made part hereof and the terms of which are incorporated herein by reference. In accordance with said attachment, Donor will have the opportunity to purchase eight (8) football tickets and four (4) basketball tickets

4. The Gamecock Club agrees that the privilege and benefits of this membership extend to [redacted] his daughters, Amanda Elizabeth Timmons (4 football tickets and 4 basketball tickets), for her lifetime only, and Amy Elizabeth Timmons (4 football tickets and 4 basketball tickets), for her lifetime only, upon death of Donor.

5. The funds contributed by Donor under the terms of this Agreement shall be deposited in a University permanent endowment account of which only the income derived therefrom may be spent as determined by the Gamecock Club.

IN WITNESS WHEREOF Donor has caused these presents to be duly authorized and the University of South Carolina Gamecock Club has hereunto set its hand and seal on the date first above written.

DONOR

By: [redacted] .S.)

Date: Feb 17, 1987

THE UNIVERSITY OF SOUTH CAROLINA

By: [redacted] (L.S.)
J. Steven Beckham
Chief Executive Assistant
to the President

Date: 2/24/87

THE UNIVERSITY OF SOUTH CAROLINA
GAMECOCK CLUB

By: [redacted] (L.S.)
Chip Clary
Director, Gamecock Club

Date: Feb 23, 1987

EXHIBIT A

LIFETIME SILVER SPUR

$40,000 or more (may be pro-rated over a 5 year period).

-Four season football tickets (best available).

-Additional four season football tickets (total of 8).

-Assigned reserved parking.

-First priority on away and bowl game tickets.

-Tickets may be assigned to one designated heir.

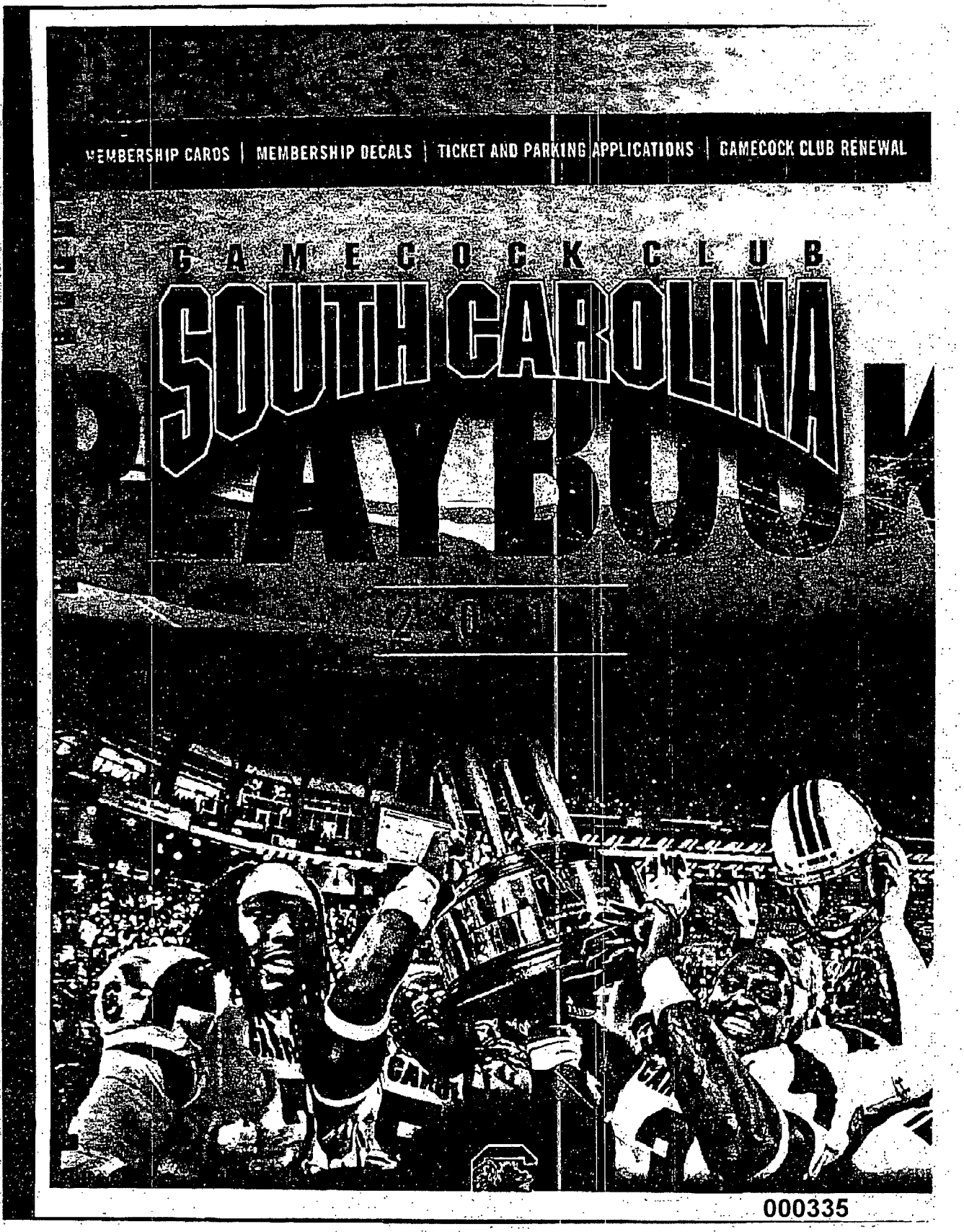
-Four season basketball tickets (best available).

-Assigned reserved parking at Coliseum (if available).

-First priority on away and tournament game tickets.

-First priority on any tickets involving any other South Carolina athletic event.

EXHIBIT D


MEMBERSHIP CARDS | MEMBERSHIP DECALS | TICKET AND PARKING APPLICATIONS | GAMECOCK CLUB RENEWAL
GAMECOCK CLUB
SOUTH CAROLINA
000335

PRIORITY POINTS AND RANKINGS

In an effort to equitably serve Gamecock Club members, a priority point system was developed to determine rankings for season ticket assignments, away and postseason game ticket distribution, parking pass assignments, and other special events. The current system was voted on and approved by the Gamecock Club Board of Directors on November 3, 2006 and amended January 25, 2013.

POINT ACCUMULATION

Effective January 1, 2007, Gamecock Club members receive:

- One point for every $100 donated to the Gamecock Club
- One point for every $100 donated to an individual sport or to the Garnet Way Capital Campaign
- One point for each season ticket purchased for football, baseball, and men's and women's basketball
- One point for each bowl ticket purchased through the Athletics Ticket Office*
- Two points for each consecutive year a donation is made to the Gamecock Club

*Effective July 1, 2013, members will receive one point for each bowl ticket purchased through the South Carolina Athletics Ticket Office. Points will not be awarded for SEC Championship tickets.

SEASON TICKET ASSIGNMENT

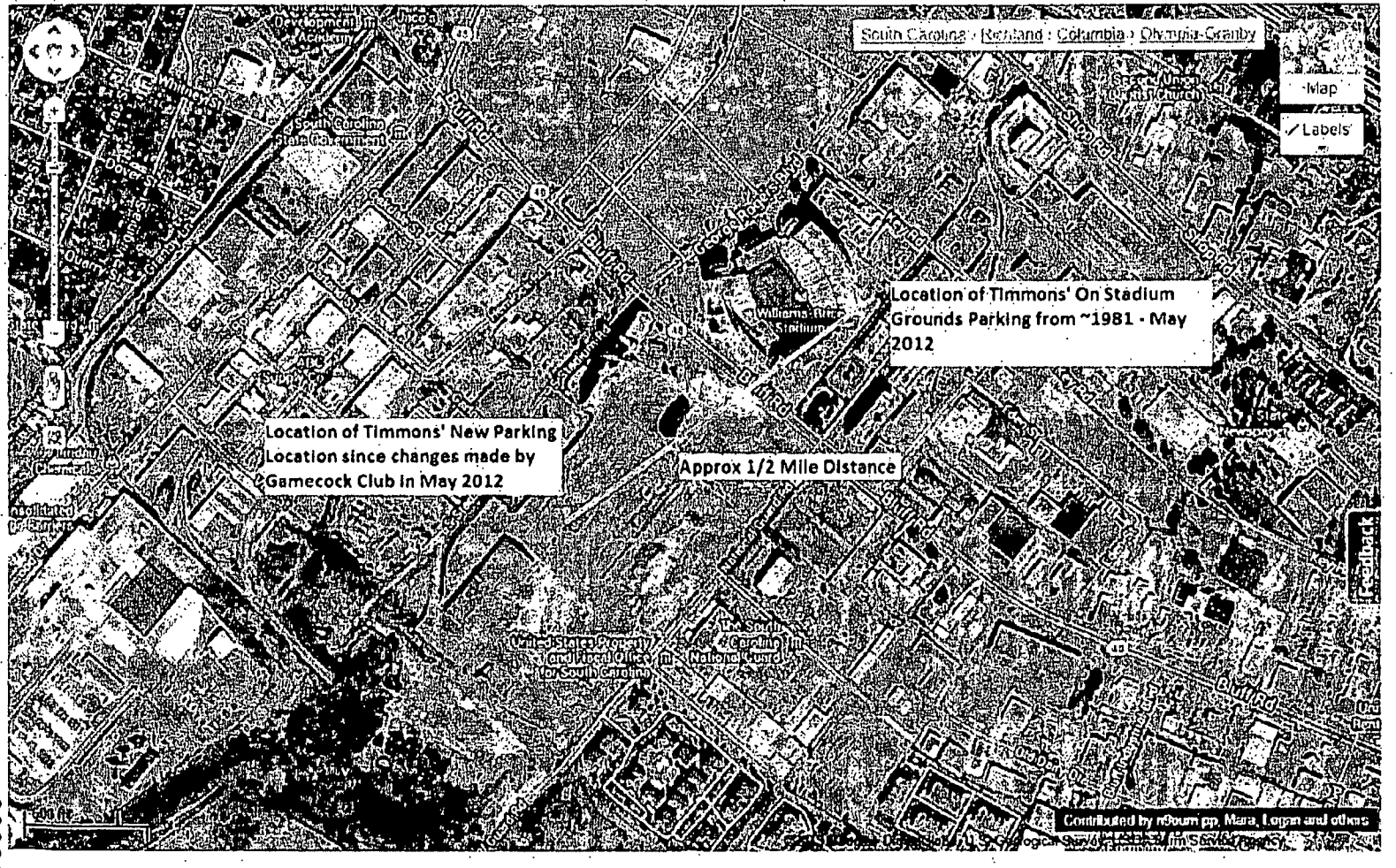
For the assignment of season tickets, Gamecock Club members are ranked by membership level first and then by points within their specific levels. The table below displays the number of members at each giving level as of December 31, 2012.

Membership Level	# of Donors
Lifetime Silver	34
Lifetime Full	188
Diamond Spur	11
Platinum Spur	28
Golden Spur	109
Garnet Spur	83
Silver Spur	1,168
Full Scholarship	2,114
Half Scholarship	2,218
Roundhouse	2411

EXH B T E

I I

000337


South Carolina › Richland › Columbia › Olympia-Granby
Map
Labels
Location of Timmons' On Stadium Grounds Parking from ~1981 - May 2012
Location of Timmons' New Parking Location since changes made by Gamecock Club in May 2012
Approx 1/2 Mile Distance
Contributed by nBoum pp, Mara, Logan and others

000338

SHED 14
RV PARKING
ACCESS DRIVE
GARNET WAY
PERMANENT RESTROOMS
PREMIUM NORTH
PREMIUM SOUTH
GAMECOCK VILLAGE
QUAD 1
QUAD 2
ACCESS DRIVE

000339

0342

Mark A. Mason
PO Box 1271
Mt. Pleasant, SC 29465

CP14

000340

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4003931

Gorden H Timmons	University Of South Carolina
Patricia A Timmons	University of South Carolina Gamecock Club
PLAINTIFF(S)	DEFENDANT(S)

Submitted by: _____	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

RICHLAND COUNTY FILED
2013 JUL 23 PM 9:49
JEANETTE W. McBRIDE C.C.P. & G.S.

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** *(CHECK REASON)*: ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** *(CHECK REASON)*: ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: **Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____ **Judge Code** _____ **Date** _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ **day of** _____, **20** _____ and a copy mailed first class or placed in the appropriate attorney's box on this 23 July 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Mark A. Mason Robert E. Stepp Bess Jones DuRant

ATTORNEY(S) FOR THE PLAINTIFF(S) ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____ **Clerk of Court** Jeanette W. McBride

SCRCP Form 4C (10/2011)

000341 SCANNED

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Gordon Timmons, Patricia A. Timmons, Amy M. Timmons now Known as Amy M. Mahoney, and Amanda E. Timmons, Plaintiffs, vs. The University of South Carolina And The University of South Carolina Gamecock Club, Defendants.	IN THE COURT OF COMMON PLEAS IN THE FIFTH JUDICIAL CIRCUIT Case No. 2012-CP-40-03931 **ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

2013 JUL 19 AM 10:43
JEANETTE W. WALDROP
C.C.P. & G.S.
RICHLAND COUNTY
FILED

This matter came before the Court on June 5, 2013, on Defendants' Motion for Summary Judgment. Counsel for all parties were in attendance at the hearing.

The non-moving party is only required to submit a mere scintilla of evidence that creates an issue of fact in order to withstand a motion for summary judgment. *Hancock v. Mid-S. Mgmt. Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009), reh'g denied (Mar. 18, 2009). In this Court's opinion, the adoption of the "Priority Points and Ranking" system by the Gamecock Club, and it's treatment of Plaintiff Gordon H. Timmons, creates issues of fact as it relates to his rights pursuant to the Lifetime Scholarship contract (formerly Lifetime Silver Spur) which is the subject of this lawsuit.

Having heard the arguments of counsel and considered the parties' pleadings, depositions, affidavits, and memorandums of law, this Court determines there are disputed issues of fact which are a matter for the jury. The Defendants' Motion for Summary Judgment is hereby DENIED.

SCANNED
000342

IT IS SO ORDERED.

Columbia, South Carolina

June 18, 2013

G. Thomas Cooper, Jr., Judge

Fifth Judicial Circuit

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	IN THE FIFTH JUDICIAL CIRCUIT
Gorden H. Timmons, Patricia A. Timmons, Amy M. Timmons now known as Amy M. Mahoney and Amanda E. Timmons,	)	Civil Action No. 2012-CP-40-3931
Plaintiffs,	)	**MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**
vs.	)	
The University of South Carolina and The University of South Carolina Gamecock Club,	)	
Defendants.	)	

Defendants the University of South Carolina ("USC") and the University of South Carolina Gamecock Club ("Gamecock Club") submit this memorandum in support of their Motion for Summary Judgment. The undisputed facts and legal conclusions therefrom establish that there is no genuine issue of material fact regarding the alleged breaches of Plaintiff Gorden Timmons' Lifetime Membership contract. The Lifetime Membership does not afford Plaintiffs any of the rights and benefits to which they claim they are entitled. Therefore, Defendants have not breached the Lifetime Membership contract as a matter of law, and Defendants are entitled to summary judgment.

FACTS

The Lifetime Membership program was established by the Gamecock Club in the mid-1980s. In exchange for certain consideration, certain rights and privileges regarding USC athletic events were afforded to donors ("Lifetime Members"). Two levels of Lifetime Memberships exist—Lifetime Silver Spur Memberships and Lifetime

Scholarship Memberships. The Lifetime Silver Spur Membership required a $40,000 or more payment, while the Lifetime Scholarship Membership required a $25,000 - $40,000 payment. (*See* Timmons Dep. Ex. 3 at 3, Apr. 5, 2013. A copy of Gorden Timmons' deposition transcript is attached hereto as **Exhibit A.**) For purposes of this lawsuit, the main difference between the two donor levels is that a Lifetime Silver Spur has first priority for away and bowl games, while a Lifetime Scholarship has second priority. (Timmons Dep. 41:4-12, Apr. 5, 2013.)

I. The Lifetime Membership of Gorden Timmons

On February 17, 1987, Plaintiff Gorden Timmons' company, Atlas Electric Company ("Atlas") entered into a Lifetime Membership contract with the Gamecock Club. (A copy of the Lifetime Membership Agreement is attached hereto as **Exhibit B.**) The Lifetime Membership provided that Atlas was a Lifetime Silver Spur in exchange for its contribution of $10,000 and its pledge of $30,000. (*Id.* at 1.) It also provided that the membership's privileges and benefits would be transferred to Gorden Timmons' daughters, Plaintiff Amanda Timmons and Plaintiff Amy Timmons (now Amanda Mahoney), upon Gorden Timmons' death. (*Id.* at 2.)

The Lifetime Membership contract has been modified twice, at the request of Gorden Timmons. First, it was downgraded from a Lifetime Silver Spur to a Lifetime Scholarship because Atlas could not fully satisfy its $30,000 pledge. (Timmons Dep. 38:22-40:3, Apr. 5, 2013.) Considering Atlas' total contribution exceeded the $25,000 threshold for a Lifetime Scholarship,[1] Gorden Timmons requested the change, which was

[1] In sum, Atlas contributed $28,000 towards the Lifetime Membership. It contributed $10,000 when it entered into the contract and then paid $18,000 of the $30,000 pledge.

granted. (*Id.*) Second, Atlas, through Gorden Timmons, requested that the title of the membership be transferred to Gorden Timmons at the time Timmons sold the company. Again, the request was granted. (Timmons Dep. Exs. 5 & 6.) Therefore, according to the express terms of the Lifetime Membership contract, Gorden Timmons, as a Lifetime Scholarship member, could avail himself of the following privileges and benefits:

- Four season football tickets (best available)
- Additional four season football tickets (total of 8)
- Assigned reserved parking
- Second priority on away and bowl games
- Tickets may be assigned to one designated heir
- Four season basketball tickets (best available)
- Assigned reserved parking at Coliseum (if available)
- Second priority on away and tournament game tickets
- Second priority on any tickets involving any other South Carolina athletic event.

(Ex. A to Lifetime Full Scholarship Membership contracts, bearing bates label DEFS - 000099, attached hereto as **Exhibit C**)

Prior to the 2012 football season, Gorden Timmons, along with other Lifetime Members who had parking on the apron of the Stadium, was informed that they no longer could park on the apron of the Stadium. The Gamecock Club emailed its Lifetime Members informing them that they could participate in the priority points systems and choose parking spaces online or assigned reserved parking will be provided to them in accordance with their Lifetime Membership contracts. (Timmons Dep. Ex. 11.) Gorden Timmons chose to participate in the priority points system, instead of availing himself of

assigned reserved parking, and selected spaces 6 and 7 in Quad 2 in the Farmers' Market parking area. (Timmons Dep. 100:23-101:4, Apr. 5, 2013.) Moreover, he was allowed to select two spaces, when previously he only had one space.

II. Present Dispute

On June 8, 2012, Plaintiffs filed the present breach of contract action. Specifically, Plaintiffs complain that the Defendants have breached the Lifetime Membership contract in the following manners: (1) by failing to provide them "second priority" in ticket assignments for away and bowl games; (2) by imposing a seat license charge; (3) by changing their assigned parking space from on the apron of Williams Brice Stadium to the Farmers' Market parking area; and (4) by imposing a parking charge on Plaintiffs.

First, regarding ticket assignments for away and bowl game, Plaintiffs contend that they do not receive the contractually-promised priority and that their alleged failure to receive the priority is a breach of Gorden Timmons' Lifetime Contract. This is indisputable, however, that Gorden Timmons receives the contractually-promised priority. (Aff. of Lance Grantham ¶¶ 8-9, a copy of which is attached hereto as **Exhibit D**.) In fact, Gorden Timmons receives a higher priority than any other non-Lifetime, Gamecock Club member for the ticket assignment for away and bowl games. (Aff. of Lance Grantham ¶ 9.) Consistent with SEC practice, the Gamecock Club may not receive the best seats in the away team or bowl stadiums; however, for the seats that the Gamecock Club does receive, Gorden Timmons, along with the other Lifetime Members, is at the top of the Gamecock Club priority. (*Id.* ¶¶ 8-9.)

Regarding the imposition of a seat license, Plaintiffs contend that the imposition of a fee under the Yearly Equitable Seating ("YES") program is a breach of Gorden Timmons' Lifetime Membership contract. Gamecock Club members were notified of the Yearly Equitable Seating ("YES") program in September of 2008. (Aff. of Lance Grantham ¶ 10.) In February of 2009, the USC Athletics Ticket Office invoiced Plaintiff Gorden Timmons, along with the other Gamecock Club members, and then received payment from Timmons in May of 2009. (*Id.* ¶¶ 11-12.) Gorden Timmons has paid the seat donation, but has not paid under protest. (*Id.* ¶ 13.)

Regarding the relocation of a football parking space, Plaintiffs argue that the relocation of the parking space they used from the apron of Williams Brice Stadium ("Stadium") to the Farmers' Market parking lot across Bluff Road is a breach of Gorden Timmons' Lifetime Membership contract. Gorden Timmons was no longer able to park on the apron of the Stadium beginning with the 2012 football season. He participated in the online parking space selection program and selected spaces 6 and 7 in Quad 2 of the Farmers' Market. (Timmons Dep. 100:23-101:4, Apr. 5, 2013; Gorden Timmons' Lifetime Membership contract does not provide that he is entitled to any specific space. (*See* Ex. A to Lifetime Membership contract attached hereto as Exhibit B.) Rather, it provides that he may enjoy "assigned reserved parking."

Regarding the imposition of a parking charge, Plaintiffs contend that they are entitled to free parking and that the assessment of a parking charge is a breach of Gorden Timmons' Lifetime Membership contract. In January of 2006, the Gamecock Club sent a brochure to all Gamecock Club members, including Gorden Timmons, notifying them that the parking charge would begin with the 2007 football season. (Aff. of Jeff Crane ¶¶

4-5, a copy of which is attached hereto as **Exhibit E.**) In March of 2007, Gorden Timmons was invoiced for the parking charge, and the Gamecock Club received his payment in May of 2007. (*Id.*¶¶ 6-7.) Like the YES donation, Gorden Timmons has never paid the parking charge under protest. (*Id.* ¶ 8.) Gorden Timmons' Lifetime Membership contract does not provide that he is entitled to free parking. (*See* Ex. A to Lifetime Membership contract attached hereto as Exhibit B.)

LEGAL STANDARD

Summary judgment is appropriate if the pleadings and other supporting documents "show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. In determining whether to grant summary judgment, a court must view the evidence and its reasonable inferences in the light most favorable to the nonmoving party. *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) (citing *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991)). The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. *Dawkins*, 354 S.C. at 69, 580 S.E.2d at 438 (citing *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)).

In determining whether a genuine issue of fact exists, a court must assume as true the evidence of the nonmoving party and draw all *reasonable* inferences in favor of that party. *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). At the summary judgment stage, "the court does not weigh conflicting evidence with respect to a disputed material fact." *S.C. Prop. & Cas. Guar. Ass'n v. Yensen*, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct. App. 2001) (citing case). When plain, palpable, and

indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Ellis v. Davidson*, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct. App. 2004).

Because there are no genuine issues of material fact in this case, Defendants' Motion for Summary Judgment should be granted.

ARGUMENT

I. DEFENDANTS HAVE NOT BREACHED THE LIFETIME MEMBERSHIP CONTRACT AS A MATTER OF LAW.

Defendants have complied with every term of Gorden Timmons' Lifetime Membership contract. First, Gorden Timmons receives the contractually-promised priority with respect to ticket assignment for away and bowl games. Second, Plaintiffs twist and contort the Lifetime Membership contract to support their claims that lack contractual support. Specifically, the Lifetime Membership contract does not afford them free parking, does not preclude them from being subject to the YES program, and does not guarantee them a specific parking spot next to the Stadium. Because Defendants have complied with the Lifetime Membership contract and because Plaintiffs' interpretation of the same is strained and incorrect, this Court should grant Defendants' Motion for Summary Judgment.

A. Plaintiff Gorden Timmons Receives Second Priority for Away and Bowl Games.

Defendants afford Plaintiff Gorden Timmons the priority promised to him in his Lifetime Membership contract. In his sworn affidavit, Lance Grantham, USC's Assistant Athletic Director for Tickets Operations, testifies that Gorden Timmons does receive second priority and that he, along with the other Lifetime Members, have the highest

priority within the Gamecock Club with respect to away and bowl game ticket assignments. (Aff. of Lance Grantham ¶¶ 8-9.) This is undisputed.

Plaintiffs claim that they do not have the requisite priority simply because their away and bowl games tickets are not as good as they used to be. However, this argument does not take into account the fact that tickets assigned to the Gamecock Club by other teams are not as good as they used to be. (*Id.* ¶ 7, stating quality of seats assigned to USC by other teams and bowl sponsors began to decline in the early 2000s). It is undisputed, Plaintiff Gorden Timmons receives the priority he was afforded in his Lifetime Membership contract, and there is no evidence to the contrary.

B. The Imposition of a Parking Charge Is Not a Breach of the Lifetime Membership Contract.

The Lifetime Membership contract does create a right to free parking, and it does not preclude Defendants from imposing such a charge. The fact that the Gamecock Club did not impose a parking charge in prior years does not allow the Plaintiffs to read "free parking" into the Lifetime Membership contract. The unambiguous terms of the Lifetime Membership contract do not prohibit the parking charge and render Plaintiffs' breach of contract claim unsuccessful.

The law of South Carolina regarding the construction and interpretation of contracts is clear. "'The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language.'" *Whitlock v. Stewart Title Guar. Co.*, 399 S.C. 610, 614, 732 S.E.2d 626, 628 (2012) (quoting *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009)). "The intention of the instrument is to be determined first from the language. Language which is perfectly clear determines the full force and effect of the document." *Gilstrap v. Culpepper*, 283 S.C.

83, 85, 320 S.E.2d 445, 447 (1984); *State v. Gates*, 299 S.C. 92, 95, 382 S.E.2d 886, 887 (1989). *Whitlock*, 399 S.C. at 615, 732 S.E.2d at 628 ("'Where the contract's language is clear and unambiguous, the language alone determines the contract's force and effect.'"). "'A clear and explicit contract must be construed according to the terms the parties have used, with the terms to be taken and understood in their plain, ordinary, and popular sense.'" *Cullen v. McNeal*, 390 S.C. 470, 482, 702 S.E.2d 378, 384 (Ct. App. 2010) (quoting *Gilbert v. Miller*, 356 S.C. 25, 30, 586 S.E.2d 861, 864 (Ct. App. 2003)).

"'Where an agreement is clear and capable of legal interpretation, the court's only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it.'" *Highlands Property Owners Ass'n, Inc. v. Shumaker Land, LLC*, 397 S.C. 432, 437, 724 S.E.2d 685, 687 (Ct. App. 2012) (quoting *Ellie, Inv. v. Miccichi*, 358 S.C. 78, 93, 594 S.E.2d 485, 493 (Ct. App. 2004)). "'The court is without authority to consider parties' secret intentions, and therefore words cannot be read into a contract to impart an intent unexpressed when the contract was executed.'" *Davis v. KB Home of South Carolina, Inc.*, 394 S.C. 116, 127, 713 S.E.2d 799, 805 (Ct. App. 2011) (quoting *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009)).

A court cannot conclude that silence, alone, creates an ambiguity. *Jordan v. Sec. Grp., Inc.*, 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993). Similarly, a court cannot look to evidence of custom or usage to contradict, vary, or explain the terms of an unambiguous contract. *Moss v. Porter Bros., Inc.*, 292 S.C. 444, 448, 357 S.E.2d 25, 27 (Ct. App. 1987); *Autrey v. Bell*, 114 S.C. 370, __, 103 S.E. 749, 750 (1920) ("The evidence of custom and usage had nothing to do with the express contract, the basis of

plaintiff's claim, and could not vary or explain the same; it was unambiguous in its terms.")

In the present case, there is no reference in the Lifetime Membership contract to free parking. In fact, the only reference to parking in the Lifetime Membership contract is that Gorden Timmons is entitled to "assigned reserved parking." There is no prohibition on the imposition of a parking charge. The fact that a parking charge was assessed for the first time in 2007 (*see* Aff. of Jeff Crane ¶¶ 5-8) does not change the analysis that the clear, unambiguous terms of the Lifetime Membership contract does not preclude the imposition of a parking charge. Therefore, Plaintiffs' claim regarding the parking charge fails, and this Court should grant Defendants' Motion for Summary Judgment with respect to this claim.

C. The Imposition of a Seat License Donation Is Not a Breach of the Lifetime Membership Contract.

The implementation of the YES program does not violate any of Gorden Timmons' contractual rights under the Lifetime Membership contract. A seat donation under the YES program is not precluded under the express terms of Gorden Timmons' Lifetime Membership contract. Nor does the contract provide that the ticket price must remain fixed. In fact, Gorden Timmons admitted as such. (Timmons Dep. 76:1-13, Apr. 5, 2013.) The clear, unambiguous terms of the contract allow for such a donation, and Timmons voluntarily chose to participate since May of 2009. (*See* Aff. of Lance Grantham ¶¶ 10-13.) Therefore, Plaintiffs' claim with respect to the seat donations fail, and this Court should grant Defendants' Motion for Summary Judgment with respect to this claim.

D. "Assigned Reserved Parking" Was Provided to Plaintiffs as Provided Under the Terms of the Lifetime Membership Contract.

The clear, unambiguous terms of Gorden Timmons' contract provide that "assigned reserved parking" will be afforded to Timmons. The contract does not provide that Timmons is entitled to a specific parking space or parking on the apron of the Stadium. Nor do the contracts make any statement about Timmons' priority for purposes of the assignment of parking spaces. Timmons' strained interpretation of the contracts is incorrect and cannot support its breach of contract claim.

1. The Lifetime Membership Contract is Unambiguous.

As previously discussed, "[t]he cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." *Madden v. Bent Palm Investments, LLC*, 386 S.C. 459, 464-65, 688 S.E.2d 597, 600 (Ct. App. 2010) (quoting *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009)). "If the contract's language is clear and unambiguous, the language alone determines the contract's force and effect." *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003). In other words, a court must look only to the four corners of the contract to determine the parties' intent and "'when such contract is clear and unequivocal, its meaning must be determined by its contents alone.'" *Silver v. Aabstract Pools & Spas, Inc.*, 376 S.C. 585, 591, 658 S.E.2d 539, 542 (Ct. App. 2008) (quoting *McPherson v. J.E. Sirrine & Co.*, 206 S.C. 183, 204, 33 S.E.2d 501, 509 (1945)).

"[A] contract is ambiguous when it is capable of more than one meaning or when its meaning is unclear." *Blackbaud, Inc v. S.C. Dep't of Revenue*, 386 S.C. 446, 451, 688 S.E.2d 150, 152 (Ct. App. 2010). The question of whether a contract is ambiguous is a

question of law for the court. *Whitlock*, 399 S.C. at 615, 732 S.E.2d at 628. "'A contract is read as a whole document so that one may not create an ambiguity by pointing out a single sentence or clause.'" *Middleton, III v. Eubank*, 388 S.C. 8, 14, 694 S.E.2d 31, 34 (Ct. App. 2010) (quoting *McGill*, 381 S.C. at 185, 672 S.E.2d at 574). As previously discussed, "[s]ilence on the issue does not create ambiguity." *Davis v. Orangeburg-Calhoun Law Enforcement Comm'n*, 344 S.C. 240, 542 S.E.2d 755 (Ct. App. 2001). Indeed, "[i]t is elementary law that all parol agreements leading to the written contract are merged in the writing. The omission of any . . . antecedent agreement does not create an ambiguity." *Welch v. Edisto Realty Co.*, 170 S.C. 31, ___, 169 S.E. 667, 671 (1933) (concluding that "[i]f plaintiffs desired the parol agreement, for which they now contend, be incorporated in the written instrument, they should have taken legal steps to reform that paper"). Here, the contract's language is clear and unambiguous. As explicitly stated in Exhibit A to the contract, Gorden Timmons is entitled to "assigned reserved parking." The contract does not grant Timmons a specific space nor does it grant Timmons a space on the apron of the Stadium. Nor does it address the priority that Timmons has with respect to the assignment of that space. It simply provides that "assigned reserved parking" is available for the Timmons. Nothing more is promised to Timmons. The contractual term is clear, and is not capable of more than one meaning. "Assigned reserved parking" has been provided to Timmons, and therefore, there is no breach of the clear contractual term.

2. The Parol Evidence Rule Precludes Extrinsic Evidence.

When a contract is unambiguous, a court may only look within the four corners of the contract to determine the parties' intent. "'The parol evidence rule prevents the

introduction of extrinsic evidence of agreements or understandings contemporaneous with or prior to execution of a written instrument when the extrinsic evidence is to be used to contradict, vary, or explain the written instrument.'" *Koontz v. Thomas*, 333 S.C. 702, 709, 511 S.E.2d 407, 411 (quoting *Gilliland v. Elmwood Props.*, 301 S.C. 295, 302, 391 S.E.2d 577, 581 (1990)); 11 Samuel Williston & Richard A. Lord, *A Treatise on the Law of Contracts* § 33:1 (4th ed. 1999) (noting that "'parol' or 'extrinsic' evidence includes any evidence that seeks to improve an agreement or understanding arising out of the parties' words or conduct spoken or engaged in prior to or contemporaneous with the execution of the final, fully integrated written agreement . . . ."). "'The terms of a completely integrated agreement cannot be varied or contradicted by parol evidence of prior or contemporaneous agreements not included in the writing.'" *Davis*, 394 S.C. at 128, 713 S.E.2d at 805 (quoting *Wilson v. Landstrom*, 281 S.C. 260, 266, 315 S.E.2d 130, 134 (Ct. App. 1984)); 32A CJS *Evidence* § 1552 ("[I]n order to let in evidence of a collateral agreement between the parties, such agreement must be consistent with the terms of the writing; if the evidence tends to vary or contradict the terms of the written instrument, or defeat its operation, it cannot be received.").

Here, Plaintiffs cannot offer material outside the four corners of the contract to contradict, vary, or explain the terms of the Lifetime Membership contract. Any writings or oral communications prior or contemporaneous to the execution of the Lifetime Membership contract are inadmissible. Timmons relies on a letter he wrote to Chip Clary with the Gamecock Club in which he claims that he intended to refuse his existing parking space. This letter predates the execution of the Lifetime Membership contract, however, and therefore, cannot be used to contradict, vary, or explain the unambiguous

terms of the contract. If Timmons intended that a specific term being included in his Lifetime Membership contract, he should have made sure it was in the final contract. He did not, and cannot now rely on his own letter to dispute the meaning of "assigned reserved parking." After all, "[i]t is elementary law that all parol agreements leading to the written contract are merged in the writing. The omission of any . . . antecedent agreement does not create an ambiguity." *Welch*, 170 S.C. at ___, 169 S.E. at 671. The terms of the contract speak for themselves, and the Timmons cannot look to this letter or other communications with the Defendants to challenge the terms of the Lifetime Membership contract.

Moreover, Timmons' own statements belie his contention that "assigned reserved parking" means he is entitled to a certain space. In his letter, dated January 10, 2011, to Patrick McFarland, executive director of the Gamecock Club, Timmons states the following:

> To continue, we have enjoyed our current stadium-side parking place for around thirty years. When our current stadium-side parking is eliminated and allocation for our new space is assigned, we should receive our parking space allocation after Silver Spur Donors and not as part of your point system. ***This would comply with our privileges as promised in our contract.***

(Timmons Dep. Ex. 9 (emphasis added).) Approximately, one and half years later, Timmons emailed Toni Day, assistant to Patrick McFarland, expressing similar positions. Specifically, he stated "I urge the University to honor their legal obligation by giving me a priority selection time that will assure our location in the VIP area [in the Farmers' Market parking area]." (Timmons Dep. Ex. 10.) Timmons cannot now genuinely contend that "assigned reserved parking" means that he is entitled to a specific parking space or even that he is entitled to parking on the apron of the Stadium. In these

communications, he states that parking in the VIP area of the Farmers' Market parking area would comply with the terms of the Lifetime Membership contract. Now, he attempts to crowbar his own letter into the terms of a fully integrated contract to challenge the meaning of assigned reserved parking. The parol evidence rule precludes him from doing so, and this Court should glean the parties' intentions solely from the four corners of the Lifetime Membership contract.

II. THE STATUTE OF FRAUDS BARS PLAINTIFFS' RELIANCE ON ORAL COMMUNICATIONS OR DOCUMENTS OTHER THAN THE CONTRACT.

Because the Lifetime Membership contract cannot be performed within one year, Plaintiffs cannot rely on any oral communications or documents, other than the Lifetime Membership contract, to support their breach of contract claim. South Carolina's Statute of Frauds provides, in part, that "[n]o action shall be brought whereby . . . (5) [t]o charge any person upon any agreement that is not to be performed within the space of one year from the making thereof . . . [u]nless the agreement upon which such action shall be brought or some memorandum or note thereof be in writing and signed by the party to be charged therewith or some person thereunto by him lawfully authorized." S.C. Code Ann. 32-3-10 (Rev. 2007). In other words, "[t]o satisfy the Statute of Frauds, every essential element of the contract must be expressed in writing and signed by the party compelled." *Fici v. Koon*, 372 S.C. 341, 346, 642 S.E.2d 602, 604 (2007) (citing cases).

Here, Plaintiffs rely on Timmons' letter to Clary to contend that they are entitled to a certain parking space for the rest of their Lifetime Membership contract, binding the

Defendants for decades.[2] However, that letter is not signed by the Defendants (the parties to be charged), and therefore, is barred by the Statute of Frauds. There is no writing, signed by either of the Defendants, that promises the Plaintiffs a certain parking space or parking on the apron of the Stadium.[3] Rather, the only writing signed by Defendants is the Lifetime Membership contract, which promises Plaintiffs only assigned, reserved parking. To the extent Plaintiffs try to characterize this letter as a counteroffer, it was squarely rejected when Defendants sent an executed Lifetime Membership contract to Gorden Timmons, who then executed the same that had no reference to specific parking

[2] Even if the Statute of Frauds did not bar Plaintiffs from relying on Timmons' letter to Chip Clary, Chip Clary, as an employee of the Gamecock Club, cannot alter the terms of a contract entered into by the State of South Carolina. *See Service Management, Inc. v State Health and Human Services*, 298 S.C. 234, 237, 379 S.E.2d 442, 444 (Ct. App. 1989) ("An erroneous misconstruction of the contract by a State employee does not change its explicit terms and the State is not bound by the act of its officer in making an unauthorized payment.").

Similarly, Timmons cannot successfully argue that Chip Clary created any binding contractual terms outside of the Lifetime Membership contract. Timmons, in contracting with the University and the Gamecock Club, is charged with knowing the authority of the government official entering into the contract. *City of North Charleston v. North Charleston Dist.*, 289 S.C. 438, 443, 346 S.E.2d 712, 715 (1986) ("A person who contracts with a municipality is charged with the knowledge of its limitations and restrictions in making contracts.") Any contractual obligation alleged to have been created solely through Chip Clary fails because Chip Clary lacked any authority to create such obligations.

[3] An interpretation of the contract that allows Plaintiffs to use the same parking space for two lifetimes most likely would be void against public policy. The government's power to contract is not unlimited. Rather, it may contract only for a "reasonable duration." *Cf. Piedmont Public Service Dist. v. Cowart*, 319 S.C. 124, 135-36, 459 S.E.2d 876, 882 (Ct. App. 1995) (holding municipality's twenty-year employment contract with administrator was void as a violation of public policy because the duration was not reasonable). An entitlement to a specific parking space for two lifetimes ties the hands of the Defendants for an unreasonable time, and therefore, such an interpretation of the Lifetime Membership contract would render it void. Moreover, the South Carolina Constitution would bar compensation for the "breach" of such a contract. S.C. Const. art. III, § 30 ("The General Assembly shall never grant extra compensation . . . nor authorize payment or part payment of any claim under any contract not authorized by law . . . .").

space. Assigned reserved parking has been provided to Plaintiffs, and therefore, Plaintiffs' claim with respect to assignment of parking fails.

III. THE STATUTE OF LIMITATIONS BARS PLAINTIFFS' CLAIMS WITH RESPECT TO THE PARKING CHARGE AND THE SEAT DONATION.

Because Plaintiffs has been subject to both the parking charge and the seat donation for three years before bringing their lawsuit, their claims for the same are barred by the statute of limitations. In a breach of contract action, a plaintiff has three years from the date of the action accrues. S.C. Code Ann. § 15-3-530. The limitations period begins to run when a party knows or should have known, through the exercise of due diligence, that he may have a claim. *Anonymous Taxpayer v. S.C. Dep't of Revenue*, 377 S.C. 425, 438-39, 661 S.E.2d 73, 80 (2008). "In analyzing a limitations defense, '[t]he fundamental test for determining whether a cause of action has accrued is whether the party asserting the claim can maintain an action to enforce it.'" *Harvey v. S.C. Dep't of Corr.*, 338 S.C. 500, 508, 527 S.E.2d 765, 769 (Ct. App. 2000) (quoting *Matthews v. City of Greenwood*, 305 S.C. 267, 269, 407 S.E.2d 668, 669 (Ct.App.1991)).

Here, the statute has run for both the parking charge claim and the YES program seat donation claim. Regarding the imposition of the parking charge, Timmons was notified of it in January of 2006 when the Gamecock Club mailed out his brochure describing it and that the "USC Athletic Department will begin charging for parking" beginning with the 2007 football season. (Aff. of Jeff Crane ¶¶ 4-5.) Timmons was invoiced for the parking space in March of 2007, and the Gamecock Club received his payment in May of 2007. (*Id.*¶¶ 6-7.) He has continued to pay for his parking each year and has never paid under protest. (*Id.* ¶8.) At the latest, he should have known he may have a claim when he paid for the parking in March of 2007, which is well over three

years before he filed this complaint on June 8, 2012. Therefore, his breach of contract claim with respect to charging for parking is barred by the statute of limitations.

Regarding the YES program seat donation claim, the Gamecock Club mailed a brochure to each of its members in September of 2008, informing each of them of the YES program. (Aff. of Lance Grantham ¶ 10.) In February of 2009, the USC Athletics Ticket Office invoiced Gorden Timmons for his seat donations, and received Timmons' payment on or about May 18, 2009. (*Id.* ¶¶ 11-12.) He has continued to pay these seat donations each year and has never paid under protest. (*Id.* ¶ 13.) Timmons was notified of, invoiced for, and paid the donations over three years before filing this lawsuit on June 8, 2012. At the latest, Timmons should have known he had a claim when he paid the seat donation in May of 2009. Consequently, his breach of contract claim regarding the YES program is barred by the statute of limitations.

Plaintiffs try to avoid this result by claiming that class actions were filed regarding the parking charge and the YES program. (Aff. of Gorden Timmons ¶ 37.) First, no class actions have been filed over the parking charge and the YES program, and this Court can take judicial notice of its own docket to determine that no class actions have been filed. *See Sloan v. Greenville Cnty.*, 380 S.C. 528, 537-38, 670 S.E.2d 663, 668 (Ct. App. 2009) (noting that a court can take judicial notice of its docket). Second, it appears that South Carolina has not answered whether the filing of a class action tolls the statute of limitations. In *Roof v. Swanson,* 344 S.C. 315, 319, 543 S.E.2d 278, 280 (Ct App. 2001), the South Carolina Court of Appeals noted that it was an issue of first impression, but then did not rule on the issue, concluding that the statute had already run even if it were tolled during the class action. Plaintiffs' argument fails. They were made

aware of their possible claims over three years before they filed their complaint, and therefore, the claims regarding the parking charge and the YES program must be dismissed.

IV. PLAINTIFFS' CLAIM TO A SPECIFIC PARKING SPACE FAILS FOR LACK OF CONSIDERATION.

Plaintiffs paid no additional consideration for a specific parking space, and therefore, their claim to a specific parking space fails as a matter of law. Even if Plaintiffs could avoid the Statute of Frauds and Clary's lack of authority to grant them a specific space, Plaintiffs contributed no additional consideration to support a specific space, rather than the assigned reserved parking afforded to them under the contract. A contract fails for lack of consideration. *Howard v. S.C. Nat. Bank*, 288 S.C. 421, 425, 343 S.E.2d 41, 43 (Ct. App. 1986) (refusing to find enforceable promise because party neither agreed to make payments or do anything in return for promise). Here, Timmons gave consideration for assigned reserved parking, but did not do so for a specific parking space. (*See* Timmons Dep. 40:16-41:3; 107:13-24, Apr. 5, 2013). Therefore, Plaintiffs' claim to a specific parking space fails as a matter of law.

V. WAIVER BARS PLAINTIFFS' CLAIMS WITH RESPECT TO THE PARKING CHARGE AND THE SEAT DONATION.

As previously discussed, Plaintiffs sat on their rights with respect to their claims regarding the parking charge and the YES program. They knew and participated in the programs for over three years before filing a complaint about them. "A waiver is a voluntary and intentional abandonment or relinquishment of a known right." *Sanford v. S.C. State Ethics Comm'n*, 385 S.C. 483, 496, 685 S.E.2d 600, 607 *opinion clarified*, 386 S.C. 274, 688 S.E.2d 120 (2009). Plaintiffs knew about the parking charge as early as

January of 2006 and began paying it every year (without protest) beginning in May 2007. (Aff. of Jeff Crane ¶¶ 4-8.) Similarly, Plaintiffs knew about the YES donation as early as September of 2008 and began paying it every year (without protest) beginning in May of 2009. (Aff. of Lance Grantham ¶¶ 10-13.) Plaintiffs have known about these charges for over three years and paid to them voluntarily, until they chose to file a lawsuit over parking spaces.[4] They have voluntarily and intentionally abandoned and relinquished any rights to challenge these charges. Consequently, this Court should grant Defendants' Motion for Summary Judgment with respect to these claims.

VI. PATRICIA TIMMONS LACKS STANDING TO PURSUE THESE CLAIMS.

Patricia Timmons is not a Lifetime Member, and she is not a third party beneficiary. Her husband is the Lifetime Member, and her daughters are the third party beneficiaries. For a person to have standing, he must have suffered (1) an injury in fact, (2) that is causally connected to the conduct complained of, and (3) that it is "'likely'" that the injury will be "'redressed by a favorable decision.'"[5] *ATC South, Inc. v. Charleston County*, 380 S.C. 191, 195-96, 669 S.E.2d 337, 339 (2008) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). Patricia Timmons is neither a party to the contract, nor is she a third party beneficiary. Therefore, she lacks standing, and this

[4] Likewise, Plaintiffs chose to throw in claims about allegedly poor seat locations at away and bowl football games in 2010 and at the 2011 College World Series. (Compl. ¶¶ 17-20.) As previously discussed, these claims have no merit as Gorden Timmons, as a Lifetime Member, receives higher priority than any other non-Lifetime Gamecock Club member. (Aff. of Lance Grantham ¶ 9.)

[5] Standing may also be conferred by statute and under the public importance exception. *ATC South, Inc.*, 380 S.C. at 195, 669 S.E.2d at 339. Neither of the grounds is applicable here.

Court should grant Defendants' Motion for Summary Judgment with respect to her claims.

CONCLUSION

For the reasons set forth above, and based on the pleadings, affidavits, deposition transcripts, and written discovery in this action, Defendants respectfully request that this Court grant their Motion for Summary Judgment.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

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June 4th, 2013

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

COURT OF COMMON PLEAS

Gorden H. Timmons, Patricia A. Timmons, Amy M. Timmons now known as Amy M. Mahoney and Amanda E. Timmons,

Plaintiffs,

vs.

Civil Action No. 2012-CP-40-3931

The University of South Carolina and The University of South Carolina Gamecock Club,

Defendants.

D E P O S I T I O N

WITNESS: GORDEN H. TIMMONS

DATE: Friday, April 5, 2013

TIME: 9:05 a.m.

LOCATION: Sowell Gray Stepp & Laffitte
1310 Gadsden Street
Columbia, South Carolina

TAKEN BY: Attorney for the Defendants

REPORTED BY: LISA GARSON
Court Reporter

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STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF RICHLAND

Gorden H. Timmons, Patricia A. Timmons, Amy M. Timmons now known as Amy M. Mahoney and Amanda E. Timmons,
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PATRICIA A. TIMMONS

(INDEX AT REAR OF TRANSCRIPT)

* * * * * * * * * * * *

GORDEN H. TIMMONS being first duly sworn, testified as follows:

EXAMINATION

BY MS. DURANT:

Q. Good morning, Mr. Timmons.

A. Good morning.

Q. We met beforehand, but for the record, my name is Bess DuRant. I represent the University of South Carolina and the Gamecock Club. Have you ever been deposed before?

A. I have.

Q. Tell me about that.

A. You want all of them?

Q. Sure.

A. I don't know if I can remember all of them. I was deposed most recently in a timber litigation in Charleston. I was the party that -- we had a timber theft on property that my wife and I own.

They basically came in and stole 67acres of timber and sold it without contacting us or giving us the money for it or anything else. That was the most recent.

I used to be in the heating and air, electrical, plumbing, mechanical contracting business, and over the years there was probably a handful of

construction litigations that I was deposed or a witness in. That's pretty much it.

Q. You said those were construction matters.

A. Those were construction litigations.

Q. Were you parties to those lawsuits?

A. In some of them, I was actually the plaintiff. In some, I was the defendant.

Q. Well, you're no stranger to depositions.

A. No. And we've been in arbitrations and mediations and all those things.

Q. Well, maybe at the risk being redundant, let me quickly go through the rules. If I ask you a question that you don't understand, let me know and I'll do my best to rephrase it. Please ask me, rather than Mr. Hibri.

Sometimes this can get conversational, and I'll do my best to stop and let you finish your answer. I'll ask you to do the same. If you need a break, just let me know. During the breaks or while the deposition is going on, I'll ask that you don't consult with Mr. Hibri.

Mr. Timmons, what have you done to prepare for this deposition?

A. You mean in the last few days? Mostly nothing.

Q. Have you reviewed any documents?

A. In the last few days? No, ma'am. I looked at

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these on the way up here.
Q. Without telling me what you discussed, did you meet with your attorney to prepare for the deposition?
A. No.
Q. So you reviewed, what looks like --
A. The original Gamecock solicitation, and this is last year's playbook.
Q. Is there anything else that you reviewed?
A. No. Not this morning.
Q. This past week?
A. No.
Q. Past month?
A. No.
Q. Do you mind giving me your full name, please.
A. Gorden Herman Timmons. That's Gorden spelled with an E, G-O-R-D-E-N. Timmons is T-I-M-M-O-N-S. Middle name Herman.
Q. What's your address?
A. [redacted] Ridgeville, South Carolina, 29472.
Q. What is your birth date?
A. [redacted]
Q. Where were you born?
A. El Paso, Texas.
Q. How did you end up in South Carolina?

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A. My father was from South Carolina. When he got released from World War II, he was released at Fort Bliss Army Hospital. That's where I was born, and then I came back to South Carolina.
Q. When did you come back to South Carolina?
A. I think my family moved back to South Carolina in '55 or '56.
Q. So you were six or seven when you moved to South Carolina.
A. Yeah.
Q. Have you lived in South Carolina ever since?
A. Yes.
Q. Tell me about your educational background.
A. I graduated from RB Stall High School in North Charleston, went to the University of South Carolina, graduated 1970 with a BS in management. I went to the Citadel Graduate School.
I ended up with -- I want to say 24 hours towards a 30-hour master's, or MBA, and started my own business and was too busy building a business to take the last six hours. I decided I wasn't going to pay myself any more money if I got it, so I didn't pursue it any further, but I had almost completed the master's.
Q. So you had six hours left towards your MBA.
A. I believe that's correct. Yes.

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Q. Tell me about your work history.
A. My father was an electrical contractor, so I grew up in the business as a child. I was a journeyman electrician at the age of 16. I had a journeyman's card. Worked my way through Carolina, originally as an electrician with Thomas Electric Company in Columbia, and then I was in business.
So the last -- then I also worked sometimes for a CPA firm as a junior accountant. Then after that, I went into my father's business for a few years. Then I started my own -- let's see. After I left my father, I became the business manager for Trident Technical College in Charleston.
I left there and went to work for Cameron & Barkley, which is an electrical industrial wholesaler. I was the corporate purchasing agent for Cameron & Barkley on the electrical side. I left there and actually went back into business and started Atlas Electrical Company.
I ran Atlas Electric Company which became -- just a name change -- Atlas Services because we did more than just electrical. In 1996, I took that company public on the New York Stock Exchange.
Q. Did Atlas Services -- is it Atlas Services, Incorporated?
A. Correct.

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Q. Does that still exist today?
A. No. It became part of a role-up merger in an IPO on Wall Street.
Q. What was the surviving entity?
A. American Residential Services, which is known as ARS.
Q. Do you have any role in American Residential Services today?
A. I do not. I retired. I was chief operating officer for a little over two and a half years. After we went public, I retired. Now I do basically real estate land development.
Q. When did you retire from ARS?
A. End of '98 or '99. Somewhere in there.
Q. Sorry. I missed what you said, but you do commercial real estate now. Is that what you said?
A. I do primarily -- I do anything. I'm a real estate broker, but I also do land development. Predominantly, now, it's development of raw land into residential subdivisions where I sell the lots to attract builders like Mungo and different people like that.
Q. When were you a junior account at the CPA firm?
A. Probably my sophomore year at Carolina, which would have been 19 -- let's see, '67. Probably 1967 or '68.

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Q. So it was just for your sophomore year.
A. Yeah. Then I got back into electrical because one of the accounts that we were working on was an electrical contractor, and he said why are you here making minimum wage with an accounting firm when you're a journeyman electrician?
He said I can pay you, I don't know, 10-something an hour. So I gave up my $4 an hour job at the CPA firm and put my tools back on and went back to being an electrician. My wife and I were married at college eventually, so I worked as an electrician until I graduated.
Q. When were you the business manager for Trident Tech?
A. Let's see, it's so long ago. Let's see. Probably '73. Something like that.
Q. How long were you a business manager for Trident Tech?
A. Probably only about a year.
Q. When did you start Atlas Electric?
A. In the 1974-1975 era, I guess.
Q. What was your title at Atlas Electric?
A. I was the owner-president.
Q. At all times, were you the owner and president?
A. Correct.

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Q. What was your involvement with Atlas Electric? In other words, were you there on a daily basis?
A. Absolutely. I started the company with a truck and a set of tools on my side as an electrician and built the company up to a company that I took public on the New York Stock Exchange. So you can say I was very active.
Q. Sounds like it. Tell me about your civic history, if you don't mind.
A. Define civic.
Q. Do you belong to any rotary clubs, trade associations?
A. When I had Atlas Services, I was very active in ACCA, which is the Air Conditioning Contractors of America. I actually did a lot of national guest speaking around the country at conventions, on behalf of ACCA, in relation to heating and air and also management and those types of things.
But other than -- like rotary and those types of things, it was all business related. I was president of the ACCA Association of Charleston, but primarily all industry related. When you work about 70 hours a week, there's not a lot of room for rotary and other things.
Q. No. There is not. Tell me about your family. I see your wife down at the end of the table, but tell me about your children. How many children do you have?

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A. I have two daughters. Amanda Elizabeth Timmons -- she's divorced so her name is still Timmons, and Amy Melissa Mahoney. Mandy is 43 this year in August, and Amy will be 41 this year in May.
They both went to the University of South Carolina. Mandy graduated in the honors college with a degree in finance and now has a master's in accounting.
My other daughter, Amy, she graduated from the University of South Carolina with a degree in accounting.
Q. Do you know when they graduated from USC?
A. I'd have to say Mandy graduated probably in '91, '92. In that time frame. And Amy two years later.
Q. Did Mandy get her master's in accounting from USC?
A. No.
Q. Where did she get it from?
A. She got it from the College of Charleston or the Citadel. Citadel.
Q. Where does Mandy work now?
A. Mandy is the chief financial officer for Agent Owned Real Estate which is a very large real estate entity in Charleston. They have, I don't know, 12 to 15 offices, something like that.
Q. What does Amy do?
A. Amy is an accountant. She has an array of

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miscellaneous clients. She's in business for herself.
Q. Is she a CPA?
A. No.
Q. Do you have any grandchildren?
A. I have five.
Q. What are their names?
A. We have W[redacted] P[redacted], [redacted], E[redacted] G[redacted] P[redacted], M[redacted] E[redacted] P[redacted], and we have D[redacted] M[redacted] and we have A[redacted] M[redacted].
Q. How old is W[redacted]?
A. W[redacted] is seven, I think.
Q. How old is E[redacted]?
A. E[redacted] is 11.
Q. What about M[redacted]?
A. M[redacted], I believe, is becoming 14.
Q. Now, W[redacted], E[redacted] G[redacted], and M[redacted] are the children of Mandy.
A. Mandy Timmons. Yes.
Q. How old is [redacted]?
A. B[redacted] is 14 -- just turned 15. He just got his learner's permit. A[redacted] is 16.
Q. And those are the children of Amy.
A. Correct.
Q. Do they all live in Charleston?
A. They all live in Mount Pleasant.

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Q. Have you ever been -- actually, I know this answer, but what lawsuits have you been a party to?
A. Of course, this one, the construction litigation. It was twofold. It was a construction default litigation, and it also encompassed the timber case. That was all interlinked. That just all came to completion.
We have an ongoing lawsuit against ARS in a dispute over who owns my family's life insurance policy, which Mark Mason's firm is handling. Those are the ongoing litigations.
Q. How about litigation in the past ten years?
A. Last ten years we had a -- last ten years have been none.
Q. What is the construction default litigation? How is that case styled?
A. One of my subdivisions, the contractor basically abandoned the job. We had to bring in other people to finish the job, and there was construction deficiencies in some of the construction. So we had to basically finish the job, complete the job, and so forth.
But he was also a party to the timber theft. He arranged the theft of the timber, and he took the money from the timber company, and so forth.
Q. Who was the plaintiff in that matter?

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A. Bridlewood Farms, LLC.
Q. Are you the principal of Bridlewood Farms?
A. I am.
Q. Are there any other members to Bridlewood Farms, LLC?
A. Bridlewood Farms was solely owned -- well, not solely owned. It was owned by Old South Investments, Inc., which is my primary company, and that's 60 percent ownership, and 40 percent ownership of Bridlewood Farms is owned by the Gorden Timmons Exempt Family Trust.
Q. So Bridlewood Farms is comprised of Old South Inc. and your family trust.
A. Correct.
Q. And you're the sole shareholder for Old South, Inc.
A. No. My wife and I are equal, and my daughters have some minor shares. Mandy has about four point something percent and Amy has about 2.3 percent, but the remaining is 50-50. What's remaining, my wife and I own equally.
Q. Getting to the matter at hand. Mr. Timmons, tell me about your history with the Gamecock Club.
A. Well, I was very active in the Gamecock -- I've always been a huge Gamecock fan. When I graduated from college, I think we just always continued to go to the

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football games. Right out of college, where you're trying to get going, you know, we would buy tickets, or whatever, and go to the games.
Within a few years after college, I was financially able -- we started out, I think, as a Half Scholarship donor, then we went up to a Full Scholarship donor. Eventually Atlas Electric Company became a Silver Spur Donor for a couple years, and about the time that this brochure came out -- I'm not sure of the dates on this.
They were promoting the Lifetime Silver Spur and Lifetime Full Scholarship program. After some discussion with Chip Clary, we converted. Well, not really converted. We were already Silver Spur Donors, but we became Lifetime. We bought our tickets and attended. We very seldom ever missed a home game in football. We were very active for the last five years in baseball. Don't hardly miss any of the baseball games. We've been to Omaha three times. Very active with the Gamecock Club.
Q. Remind me, when did you first become a member of the Gamecock Club?
A. Gosh, probably sometime in the '70s at the lower level. The end of the '70s sometime, probably.
Q. And then you made your way from a Half

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Scholarship to a Full Scholarship and then your company, Atlas, became a Silver Spur, correct?
A. Yes.
Q. Tell me about the Silver Spur membership.
A. One of my big customers at the time, was a gentleman in Columbia called Robert D. Hendricks. He owned Robert D. Hendricks Construction out of Lexington. He basically built primarily apartments, but he did other things, but he was a very big client of ours.
We did heating, air, and electrical for him, and he was a good friend of ours. Bobby Hendricks was his nickname. Bobby was a good friend of Chip Clary. They were in the Marine Corp together, they were very close. Bobby had seats on the 50-yard line, and he said, listen, if you want to move up to a Silver Spur, I'll talk to Chip Clary and see what I can do.
I met with Chip Clary, and Bobby and Chip Clary, so we became a Silver Spur. We got four seats on the 50, right next to Bobby Hendricks, which we still have today, and we got our parking place at that point. So that's really how we became a Silver Spur.
Q. What parking space did you get when you -- and I'm talking about just the regular Silver Spur. What parking space did you get when you became a regular Silver Spur?

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A. The one that's in dispute here. I think it's 774 or whatever the number is.
Q. 779. Does that sound familiar?
A. That's probably it. It's the same one I've always had.
Q. And you got space 779 in what year, do you think?
A. It was back when I became a Silver Spur, just prior to going to this.
Q. But when you're a regular Silver Spur, you had space 779.
A. Right. Yes.
Q. Did you have any other parking spaces before having space 779?
A. We were across the road. I guess it was called the Old Fairgrounds. It was nothing special, just on the grass type of thing, but it was a parking place of some type when we were Full Scholarship.
Q. And you got that parking space from the Gamecock Club because you were a Full or Half --
A. Whatever I was.
Q. In your complaint, you say you became a Silver Spur in '86. Does that sound about right?
A. Silver Spur?
Q. Or just a regular Silver Spur.

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A. No. I became Lifetime in '86, so it was prior to that.
Q. Do you know when you became a regular Silver Spur?
A. I don't know. Just prior to that.
Q. Would it have been five years prior to that?
A. I can't recollect that. We went -- that era, we went from Full Scholarship to Silver Spur and Lifetime Silver Spur, and so forth, all in that time frame.
Q. Do you have a contract regarding the regular Silver Spur membership?
A. No. I don't think there are contracts for that.
Q. Do you know what consideration you gave to be a regular Silver Spur?
A. I want to say back then that a Full Scholarship was $1,000, and back then it was like $2,500 to be a Silver Spur with annual contribution.
Q. Did you make that contribution or did Atlas?
A. It would have been from Atlas.
Q. What rights, privileges, benefits, did you get from being a regular Silver Spur?
A. I got my parking place, the 779, I had four seats in section 410, which I still have, and then we also got four seats in the upper deck. I think it was

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section 505. And we got -- back then you had first priority on away games, bowl games, those type of things. And that's primarily the benefit of being a Silver Spur at that time.
Q. I see you brought the original version of a 1987 --
A. It's '86, I think. Or maybe it's the '87. Let's see. This letter is not dated, which is strange, but, yeah, '87.
(Defendants' Exhibit 1, Copy of Original Gamecock Club Brochure, marked for identification.)
BY MS. DURANT:
Q. Is this copy the same as the original document that you brought today?
A. No. This is excerpts from this.
Q. I'll represent to you that that was Exhibit A to your complaint.
A. It's from here, but it's not the complete brochure.
Q. Is this the document that you received from the Gamecock Club regarding the Lifetime membership?
A. Yes. It was basically their take of the playbook, sort of like Spurrier does today, and it defines all the different levels that you could purchase, not just Lifetime. It goes into great length about the

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Lifetime and the benefits.
Q. So prior to becoming a Lifetime Silver Spur member, you had space 779, and you had four seats in section 410 and four seats in section 505.
A. Correct.
Q. And when you wanted to become a Lifetime member, you wanted to keep the same space, 779.
A. Correct.
Q. And you wanted to keep those same seats in the stadium, correct?
A. Correct.
Q. And you requested that the seats and the parking space remain the same, correct?
A. Correct. As a condition of us doing the deal.
Q. On the document that we marked as Exhibit 1, is this your handwriting?
A. It is.
Q. Tell me what your notes reference.
A. This was all actually when I had Chip on the phone, and these were just questions that, as I was talking to Chip, that I -- they had mentioned about having a plaque, and I just asked what the plaque would be about. He said it would show that you're a Lifetime, you know, you can put it in the lobby of your business.
One of the concerns I had because one of the

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options they gave you was to prorate over a five year period, your $40,000 payment. Being a small business and doing well, and wanting to think you would continue to do well, my question was, what happens if business conditions change and we are not able to fulfill the $40,000 level, but we have fulfilled the $25,000 level, which would be the Lifetime Full Scholarship thing?

Chip said that's not a problem. As long as you met the $25,000, you would still be a Lifetime Full Scholarship member. So that was one of the questions. We were -- even back in those days, I had my lofty goals of trying to build my business to the point that I would either sell it or do something like go public, which was a high aspiration.

I asked him, in the event of an Atlas sale, and I wanted to put it back into my personal, he said that's not a problem. Those were just questions up front that I had with Chip that I happened to notate on the brochure as I was talking to him.

Q. Do you remember when that conversation would have been?

A. Just prior to the letter that I sent in with the check, which would have -- because right after this conversation, I went ahead and sent him a letter with the $10,000 check and outlined what we talked about in the

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phone conversation as a condition of our purchase of the Lifetime program.

Q. Was this phone conversation the only conversation that you had with Chip Clary before you signed the Lifetime membership contract?

A. I believe so. Yes.

Q. So you never met with him in person beforehand.

A. I did not.

Q. Why were you interested in becoming a Lifetime member?

A. Well, obviously, the first word in that program, Lifetime, was the most significant thing. Being an avid Gamecock fan and my wife being a Gamecock fan and my daughters -- we aspired for them to go to Carolina. I just wanted to make sure that the same benefits that I had provided, which was the parking place and the football seats and the priority seating and all of these things, that I could provide that for my family down the road. I wanted to believe that my daughters would go to Carolina and my grandchildren. It was something that I wanted to do for my family.

One of the things, quite frankly, we liked the seats we had. We liked the park place we had. And as my wife and I get older; I wanted to make sure that that particular parking place was in front of Morris and

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Sheila Kroger, (phonetic), which are good friends of ours, right in front of their cockaboose, and as we got older, even from a wheelchair standpoint, the elevator was right there within 300 feet or 400 feet of where we were.

So I could see, in our elderly years, we could still use the elevator and still enjoy Gamecock athletics. But I wanted to make sure those seats -- we didn't know Steve Spurrier was coming at the time, but I wanted to make sure that if something good happened with the Gamecock Club, that they'd have the same privileges that I had with the parking and the priority seating and the seats associated with it.

Q. And "they" being your daughters.

A. Even my grandchildren being able to enjoy through their parents.

Q. Did you speak with anyone else besides Chip Clary associated with the University or the Gamecock Club before you entered into the Lifetime membership contract?

A. At the University? No.

Q. What about at the Gamecock Club?

A. No.

Q. Other than the document that been marked as Exhibit 1, did you receive any other communications from the University or the Gamecock Club regarding the

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Lifetime membership?

A. Well, the letters that I think have been submitted in the complaint, they went back and forth about the conditions of the contract, where we talked about that we were going to keep that specific parking place and those seats and then the contracts.

Q. But prior to the execution of the contract, did you receive anything else from the Gamecock Club or the University?

A. No.

Q. Other than the ability to pass on the same seats and the parking place to your daughters or your grandchildren and the ability to keep the parking space and the seats, were there any other reasons as to why you wanted to be a Lifetime member?

A. Well, obviously, Lifetime -- if you plan, at that time, I believe I was correct in saying that the Silver Spur contribution was $2,500 a year. And in the brochure it assures you that you are the top of the food chain, so to speak, as far as every category.

And by being Lifetime and assuring you of that, it meant no matter what the Gamecock Club did in the future, you would have to be, by contract, be the top, you know, top priority in any category. So I thought that was something that could never be taken away. And

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also by the single contribution, if a Silver Spur, if it became $5,000 a year or $10,000 a year, it wouldn't have mattered because we had a contractual arrangement for a fixed amount of money. So those are the reasons.

Q. So correct me if I'm wrong. Your reasons for being a Lifetime member were to be on top of the food chain, you have contributed a fixed amount, and that you have the ability to pass on the same seats and same parking space to your daughters and grandchildren.

A. And priority seating, correct.

Q. Anything else?

A. I can't think of anything else at this time.

MS. DURANT: I'm going to ask Ms. Garson to mark this as Exhibit 2 and hand you a copy.

(Defendants' Exhibit 2, March 9, 1987 Letter From Chip Clary, marked for identification.)

BY MS. DURANT:

Q. Do you recognize this document, Mr. Timmons?

A. Yes.

Q. What is it?

A. It's a return letter from Chip Clary where they return a fully executed Lifetime Silver Spur agreement with all the signatures, and so forth.

Q. What's the date on Mr. Clary's letter?

A. March 9th, 1987.

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Q. What's the date of the agreement? The memorandum of agreement?

A. 17, February, 1987.

Q. Who were the parties to the agreement?

A. Well, the University of South Carolina. The entity is a party to the contract because it's signed by the chief executive assistant to the president, and also the University of South Carolina Gamecock Club.

So it was my understanding that I was entering into an agreement, not with just the Gamecock Club, but with the University of South Carolina, and the donor was Gorden Timmons at the time.

Q. Is it Gorden Timmons or Atlas?

A. I just signed it Gorden Timmons, but in the beginning of the agreement it says, "Atlas/in care of Gorden Timmons."

Q. When did you sign the agreement?

A. February 17, 1967.

Q. Where did you sign the agreement?

A. In my office in North Charleston.

Q. And I assume that no USC officials were with you when you signed the contract.

A. No, ma'am.

Q. What's the purpose of this agreement?

A. The purpose?

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Q. Yes, sir.

A. It's a memorandum of agreement. It says about the monies, and it talks about the football tickets, the basketball tickets, how much money, the right to transfer, the transferability to my daughters, and then what's going to be done with the funds, which it will be put into a permanent endowment account in which the income derived will be used by the Gamecock Club.

Q. So is this a contract that governs Atlas' or your Lifetime membership?

A. Pretty much. Basically, the brochure itself was a solicitation, and the letter that I had sent in with the $10,000 check, it basically clarified some of the things that I had handwritten questions on the brochure when I talked to Chip Clary.

It also discussed the fact that we wanted to make sure that we were going to keep the exact parking space that we had, and if it's okay, here's my $10,000, and this came later.

Q. In paragraph three of this agreement -- actually, will you please read paragraph three.

A. "The Gamecock Club hereby acknowledges receipt of $10,000, and agrees in exchange of the receipt of the $10,000 and the pledge of additional $30,000, Donor will be designated as a Lifetime Silver Spur Donor with all

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the privileges and benefits pertaining as set forth in the Exhibit A, attached thereto and made part hereof and the terms of which are incorporated herein by reference. In accordance with said attachment, Donor will have the opportunity to purchase eight football tickets and four basketball tickets."

Q. What are those privileges and benefits listed in Exhibit A?

A. Eight football tickets and four basketball tickets, and, of course, we had discussed in the prior letter about the parking.

Q. I'm talking about, what are the benefits listed in Exhibit A?

A. I'm sorry. Exhibit A? Well, "$40,000 or more, prorated over a five year period; four season football tickets, best available; additional four season football tickets, total of eight; assigned reserved parking; first priority on away and bowl game tickets; tickets may be assigned to one designated heir; four season basketball tickets, best available; assigned reserved parking at Coliseum; first priority on away and tournament game tickets; first priority on any tickets involving any other South Carolina athletic event."

Q. Are those all the privileges and benefits afforded under the Lifetime membership agreement?

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A. That matches the brochure. Yes.
Q. But are those all the privileges and benefits afforded to Atlas Electric?
A. I don't understand the question.
Q. Are there any other benefits that Atlas or you received under this contract?
A. I mean, that's what the brochure said, and that's what Exhibit A said.
Q. Do you claim that you're entitled to any other privileges and benefits under this contract? Other than those listed in Exhibit A.
A. Well, one thing that's transferred -- it doesn't say that there, and this isn't an issue, but we have the right to buy those baseball tickets, which that's not really an issue.
Q. So the only thing in addition to the benefits listed in Exhibit A, are the baseball tickets.
A. Well, basically, it says in here that you have first priority to any -- like, if we wanted to start buying woman's basketball tickets, or whatever. Being the top of the food chain, we had the best available, if we wanted baseball, basketball, whatever. But that's not the issue.
Q. Where in Exhibit A do you see that?
A. It doesn't say that.

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Q. I'm sorry. Exhibit 1 to this deposition. May we have that brochure and mark it?
A. No. You can't have this. Even the Gamecock Club said they didn't have a copy of it. You can run a copy of it. Patrick McFarland said he's never seen that brochure before.
(A recess transpired.)
(Defendants' Exhibit 3, Copy of Complete Original Brochure, marked for identification.)
BY MS. DURANT:
Q. Mr. Timmons, this has been marked as Exhibit 3. Will you just confirm that it's a full and accurate copy of the original that you brought today.
A. It is.
Q. And, again, that's the 1987 Gamecock Club, but you called it a playbook.
A. Yes. It outlines the levels of donors and their programs and solicitation of funds, basically.
Q. Let me back-up a bit, if you don't mind. When you were getting ready to enter into the Lifetime Membership contract for your family, were you the only person negotiating the Lifetime contract?
A. Yes.
Q. Did your wife or your daughters talk with anyone associated with the University or the Gamecock

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Club about the membership prior to becoming a member?
A. My daughters were children at the time so, no. I talked at length with my wife about this. We were a young married couple -- well, we had been married for quite a while in 1987, but with a new business, and so forth. In 1987, $40,000 was a lot of money. So, yes. My wife and I discussed it at length -- the benefits and why we should do it.
Q. Did your wife talk with anyone at the University?
A. No.
Q. Or the Gamecock Club prior to becoming a Lifetime member.
Q. What was your wife's role in Atlas?
A. She was a secretary of the corporation, and I want to say she was also the treasurer.
Q. Did she have a daily role in Atlas?
A. Off and on. She was a school teacher by education and graduated from Carolina in education and has a master's degree from the College of Charleston and she taught for 17, 18 years.
So she got in and out of education because it was getting pretty rough to be a school teacher. She actually worked quite a bit in the business. Those years she didn't teach, she worked in the business. At the

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time that we did this, she was in the business. She did payroll, worked on accounts payable, human resource stuff, and had other roles in the business.
Q. So was she a teacher at the time she was the secretary or treasure of Atlas.
A. Well, she was secretary and treasurer even when she was a teacher, but there were times when she did not teach.
Q. For Atlas, were you the only person involved in the negotiations with the Lifetime membership?
A. Yes.
Q. So any negotiations or discussions regarding the Lifetime contract, were handled solely by you.
A. Correct.
Q. Who did you speak with at the University or the Gamecock Club about becoming Lifetime members?
A. Chip Clary.
Q. And he was the only one.
A. Yes.
Q. In your complaint, you state that you met with Chip Clary on February 7th. I thought your previous testimony said you only talked to him on the phone.
A. I met with Chip Clary at one time. I don't know whether it was when we were initially getting the seats or whether -- but this solicitation was primarily

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through the telephone. I think the meeting with Chip prior to that is when Bobby Hendricks arranged for us to meet and get the initial seats and the parking place. I did not actually go visit or meet with Chip. This was all handled by phone and by letter.

Q. Did you meet with Chip before you executed the contract?

A. I'm saying it was probably long before, but not while this was going on. No.

Q. So you met with Chip before you called him to discuss the details.

A. Probably a year or so prior. I've only physically met with Chip one time in person, and that's when Bobby Hendricks was helping us get the good seating and good parking place in return for upping our contribution level.

Q. So if I represent to you that you did sign the contract on February 17, 1987, you would have met with Chip Clary in person a year prior to February 17th.

A. Probably so. Yes.

Q. When do you believe that you spoke with Chip Clary? Would that have been a month before you signed it. Two months? Six months?

A. I'd have to look at my letters and different things. No. Not a month or six months, no. This came

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in the mail, and I usually react pretty quickly. I think after I got this, I think I reviewed it and I called and started talking to Chip about this and asked these questions.

And right after that, I think my wife and I discussed it. Could we financially afford it? And that was all happening prior to whatever my letter is dated, where I sent him the $10,000.

Q. Well, I'll show you the letter.

A. But it wasn't six months. It was all in that same --

Q. Would you have received that solicitation maybe in January of '87?

A. It would have helped if Chip -- in the brochure and letter we got from Chip, it's not dated. That would have helped a good bit. That's pretty much probably accurate, I'd have to assume. Well, here's the letter, here's another letter -- it's not dated -- from the University. Yeah, I'd have to say in January. If I got it all done in February, I would say I received it in January.

Q. And you would have called Chip soon thereafter.

A. Yes.

Q. When you met with Chip in person, the year prior, approximately a year prior to your execution,

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where did you all meet?

A. On Rosewood.

Q. At the Round House?

A. Yes. Wherever he was at the time, but that area, yes. I believe that's correct.

Q. Who was there at the meeting?

A. Just myself and Chip, as far as I remember.

Q. So Bobby Hendricks was not there.

A. No.

Q. Did you ask for the meeting?

A. Bobby Hendricks just made an introduction, and I went by and met Chip. Bobby said if you want to do your contribution, he'll handle the tickets. I just went by and introduced myself, but that was all agreed to prior to me going there. It was just a meeting.

Q. What was already agreed to?

A. That he was going to give us the seats next to Bobby Hendricks and the parking place.

Q. So the meeting with Chip Clary was to discuss the seats next to Bobby Hendricks and the parking place.

A. Yes. Prior to the Lifetime, yeah.

Q. Do you have any notes from that meeting?

A. No.

Q. Did you all talk about anything else, other than moving the seats next to Bobby Hendricks and the

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parking place?

A. I don't recall. We might have talked about Gamecock athletics in general.

Q. What did Chip say in response to the seats and the parking place?

A. He was appreciating us upping our membership level. He was a true fundraiser type of guy. I introduced myself, thanked him for helping us get a better seat and the parking place. That was about it.

Q. Did he make you any promises?

A. No.

Q. Is there anything else that you all discussed that we haven't discussed today?

A. No.

Q. Are you and Bobby Hendricks still in touch?

A. He's basically retired, and I'm not in that line of business anymore. He still has the seats next to us, but I don't think he's been to a football game in five years. His two sons come. I see his kids all the time, but I don't see Bobby. No.

Q. When was the last time you think you spoke with him?

A. Probably four or five years ago.

Q. Have you ever talked with him about your issues with the Lifetime membership program?

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A. No. Nothing really came -- there wasn't a problem with the program until Spurrier came along and they started changing everything. Until the whole program started getting revamped, there weren't any issues. They were honoring the contract and doing everything they said they would do.

There was no reason to discuss it with anybody, to be honest. It had gone without any problems all those years.

Q. Before you met with Chip Clary, what did Bobby Hendricks say about Chip?

A. Just that he was a good friend of his. They were in the Marine Corp together. That's about all I know.

Q. What did Bobby Hendricks say about the Lifetime program?

A. I don't know that I ever discussed the Lifetime program with Bobby, and I don't know whether he ever did that or not. I have no idea. He might have because he's right there next to us, but I have no idea whether he did or didn't.

Q. So clearly, you haven't talked to him about this lawsuit.

A. I have not.

Q. Do you know if any of your family members have

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spoken with him about this lawsuit?

A. They have not.

Q. At some point in time, the membership changed from a Lifetime Silver Spur to a Lifetime Scholarship, correct?

A. Correct.

Q. Do you know when?

A. Yes. There was a letter again; if I had my letters.

Q. Here, I'll give you a copy right now.

A. It basically took up -- our business condition had changed back in -- you're too young, but there was a time when interest went to 18, 19, 20 percent in construction and everything else. It was a bad time, so being in the heat and air, electrical and plumbing business, our financial condition changed.

And at that time, we had actually paid in $28,000. The initial $10,000 and three $6,000 installments. So we paid in 28, and based on our previous agreement, once we paid in $25,000, we could downgrade it to a Lifetime Full Scholarship.

MS. DURANT: I'm going to ask Ms. Gerson to mark this as Exhibit 4 and hand you a copy.

(Defendants' Exhibit 4, August 1, 1991 Letter From Gorden H. Timmons, marked for identification.)

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BY MS. DURANT:

Q. Do you recognize this letter, Mr. Timmons?

A. I do.

Q. What's the purpose of this letter?

A. To basically downgrade from a Lifetime Silver Spur to a Lifetime Full Scholarship.

Q. And I believe you stated that you put in 28 grand toward the Lifetime membership.

A. Towards the 40,000. Yes.

Q. Is that all the consideration that you put toward the Lifetime membership?

A. It is. Well, having said that, in the last 18 months, I sent Chip an additional $12,000, which he returned. Not Chip, I mean Patrick McFarland. We had an agreement that at any time I ever wanted to pay the other $12,000, I could. He sent it back and said they weren't going to be able to do that, so he sent the $12,000 back.

But in answer to your question, 28,000 is all I've paid toward the Full Lifetime.

Q. And that is the total consideration; is that right?

A. That's correct.

Q. What's the date of this letter?

A. August 1, 1991.

Q. From this date on, did you consider yourself or

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the membership to be a Lifetime Scholarship rather than a Lifetime Silver Spur?

A. I did.

Q. So now it's a Lifetime Scholarship. What rights, privileges, benefits did you have?

A. Going back to the original Lifetime Scholarship.

Q. Just for the record, you're looking at --

A. The solicitation of 1998.

Q. And that's Exhibit 1 to this deposition; is that correct?

A. Yes. This is a piece of 1. Are we using this one or the full one?

Q. Whichever one you'd like.

A. We'll just use this one.

Q. And that's Exhibit 1, correct?

A. Yeah. Under Lifetime Scholarship, which means you contributed $25,000 to $40,000, which I had met that with the 28,000, you get four season football tickets, best available, first priority; additional four season football tickets, second priority; assigned reserved parking, second priority on away and bowl games; tickets may be assigned to one designated heir; four season basketball tickets, best available; assigned reserved parking at Coliseum, if available; second priority on

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away and tournament game tickets; second priority on any tickets involving any other South Carolina athletic event.

Q. So what changes did Atlas experience going from a Lifetime Silver Spur to a Lifetime Scholarship member?

A. None, other than away games. We were second priority behind the Full Lifetime Silver Spur Donors.

Q. Anything else?

A. That's the major difference.

Q. Are there any other minor differences?

A. The first priority going to second priority is the main difference. That's really the only change.

Q. And then additionally you requested that the ownership of the membership be changed from Atlas Electric to you, Gordon Timmons, individually, correct?

A. Correct.

Q. Why?

A. Say that again.

Q. Additionally, you requested that the ownership of the membership be changed from Atlas Electric to you, Gordon Timmons, individually, correct?

A. Not in this letter.

Q. No. I'm just saying subsequently.

A. Yes.

Q. Why?

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A. Well, I had positioned my company to go public, and this being, technically, a type of an asset on the corporate books, if you will, I did not want it to go into the sale of the business. And we had previously agreed to that with Chip up-front, that he would do that.

MS. DURANT: I'm going to ask Ms. Garson to mark this as Exhibit 5 and hand you a copy.

(Defendants' Exhibit 5, June 7, 1996 Letter, marked for identification.)

BY MS. DURANT:

Q. Do you recognize this letter, Mr. Timmons?

A. Yes.

Q. Is this the letter in which you asked the University to change the ownership from Atlas Electric to you individually?

A. That's correct.

Q. Did you give any consideration to the University or to the Gamecock Club for this change?

A. No. Other than it was a predetermined condition of the original purchase. It was agreed to before we even signed up for the Lifetime program that we could do that.

Q. Did Atlas give any consideration?

A. To the University? No.

Q. Did you pay Atlas?

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A. I did not because it was not a valued asset. It was not an asset that actually carried a value on the books.

Q. This membership carried no value. Is that what you said?

A. I'm just saying it had been either previously depreciated to zero, or it had no value on the books. And I think it was written out over time as a contribution.

Q. Who paid income tax on this membership?

A. Who paid income tax?

Q. On this membership.

A. There was no income tax. It was a tax deductible contribution.

Q. When Atlas gave it to you.

A. It had no value. It had been fully depreciated.

Q. Did it have any value when Atlas transferred it to you?

A. I have no idea. My CPA who handled this going public, they handled all the books with Arthur Anderson, the SEC, and I can assure you, when the SEC puts the prospectus together to go public, this was in the letter of agreement.

It was prior to going to the prospectus.

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Whatever had to happen from an accounting standpoint, happened, I can assure you. The SEC wasn't going to let anything not happen correctly.

Q. So it's your position it had no value when it was transferred to you.

A. It has a lot of value for what the benefits are, but financially it had been expended by the corporation some five or ten years prior to that, and to this day, I have no idea how that was handled through the accounting.

Q. Do you have a copy of your personal income tax for the year this was reported?

A. No.

Q. Would your CPA have it?

A. No. He doesn't. The reason I know that is because the lawsuit with ARS about the life insurance. There was an issue that came up and they wanted it and the CPA could only provide the last seven years, which is all he's required to hold. Everything else has been destroyed.

Q. Did you ask the IRS for a copy of it?

A. No.

Q. Did the other side in that litigation ask the IRS?

A. I have no idea.

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Q. Your recollection is that the membership had no value when it was transferred to you.
A. From an income tax standpoint, probably so, but I can't answer that. I'm not a CPA.
Q. Back to Exhibit 5, when did you notify the University of the sale?
A. June 7, 1996.
Q. And you asked for the University to acknowledge this change in writing, correct?
A. Correct.
MS. DURANT: I'm going ask Ms. Garson to mark this as Exhibit 6 and hand it to you.
(Defendants' Exhibit 6, June 24, 1996 Letter, marked for identification.)
BY MS. DURANT:
Q. Do you recognize this letter?
A. Yes.
Q. Is this the written confirmation that you requested?
A. It is a written confirmation. They have a misprint, but it is the written confirmation.
Q. What is the misprint?
A. Well, it just said Lifetime Silver Spur, and it should have been a Lifetime Full Scholarship. That is the confirmation that they were transferring it to me

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personally.
Q. Did you ever notify the Gamecock Club or the University of this error referencing Silver Spur?
A. I really didn't recognize it, to be honest with you. Like I said earlier, there's really no major difference in the two contribution levels, as far as the benefits.
Q. So as of, I believe this letter says June 13, 1996, the Lifetime membership was titled in your name, correct?
A. Yes.
Q. You have several claims against the University and the Gamecock Club, right?
A. Yes.
Q. What are they?
A. Well, one is the taking away of my parking place that I was assured and guaranteed as part of the contract with the University. Secondly, the University, since they developed the new point system, has basically completely thrown the Lifetime Donors under the bus, and they no longer have any priorities to speak of.
They went from the top of the food chain down to the bottom of the food chain, and so forth. So my wife and I actually went to Omaha, being a Lifetime Donor, and we ordered our tickets as soon as you could

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order them. The tickets we got in Omaha -- we were at the foul pole on the third base line, literally. I could almost, from here to my car, that was where the foul pole was.
And between me and home plate was just a sea of Gamecock fans. That's when I became -- that and some bowl games where we were sitting in the upper deck with the band and everybody else was on the 50 yard line. It became obvious that the new point program had gone awry, and that the University was not honoring their priority program anymore for Lifetime Donors.
And that prompted my first visit to meet with Patrick McFarland, and I think his name was Jack Wilson.
Q. Do you have any other claims against the University?
A. Yes. In addition to that, the -- by letter of agreement and transfer of monies, consideration, and so forth, we had we basically purchased or had an agreement that we had the right to those particular seats for my lifetime and my wife's lifetime and my children's lifetime.
And when this new program came along, all of a sudden, you had to start paying for parking, which was never part of the deal. Then you also had to buy a seat license, which is defined as the right to purchase those

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athletic tickets that we currently enjoyed. And it's our position that when we gave $28,000, that we had bought forever the right to purchase those tickets without having to pay additional consideration.
I don't mind paying for the tickets, and I understand the price of tickets go up, but the seat licenses are defined as the right to purchase those seats, and we did that buying a Lifetime contract with $28,000 worth of consideration.
Q. I may have just misheard you, but I believe you said one of your claims was that you had a particular right to seats for your Lifetime. What seats are you talking about?
A. The seats that we had at the football games. The four next to Bobby Hendricks and those in the upper deck and the parking place.
Q. Had the seats in Williams Brice Stadium been taken from you?
A. No. But I have to pay a seat license now. What I did said was priority seating at away games, bowl games, anything else completely went away, which was one of the major considerations for being a Lifetime Donor.
You were the at the top of the food chain. You get the best seats available. If you went to Clemson -- this even goes to when I get my tickets for the Clemson

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games now. I got the worse seats there are. So, yeah, I mean, that's been a big problem.

Q. But today you're not complaining that your seats at Williams Brice Stadium have changed or have been taken away from you.

A. They have not been taken away, but we're having to pay a seat license now for the right to purchase the tickets, which was part of the Lifetime contract. And we have to pay for our parking place, which we never had to pay.

Q. Let's talk about your complaints about the priority system, specifically with how the priority point system has impacted the seats that you received for away and bowl games.

A. Okay.

Q. What are your complaints about how the priority point system affects your seats at away and bowl games?

A. Well, as I pointed out, by going to Omaha and sitting at the foul pole, going to Clemson and sitting in the worse seat. Everywhere we went, we had the worst seats available after the new points system went into effect.

Prior to that, we had great tickets, just like we were promised. What happened is that when the new point system went into effect, they basically said

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that -- to quote Jack Wilson and Patrick McFarland in a meeting on October 7, 2010, where my daughter and I met with them. Their comment was, Mr. Timmons, you have second priority seating on all away games.

And Jack Wilson and Patrick McFarland said, so that means -- I said, that's fine. So that means after you give Lifetime Silver Spur Donors their priority, that my category is next. He said, no. That's not what it means. It means that after we fill everybody's seat request, you're second priority. I said, excuse me. Say that one more time. He said, if we have 12,000 requests for tickets, you're second priority of those 12,000 requests. You get second priority.

I said that's absolutely the wrong interpretation of this book, and I brought this book out and put it on Patrick McFarland and Jack Wilson's desk. They both sat there and told my daughter and myself, Amy Mahoney, that this was the first time they had ever seen this book. They had no idea this book existed. They told my daughter and I both that.

And I said, let me get this straight. You're saying this book right here, you don't even have a copy of this in the Roundhouse. He said, we have no copy of this book, don't know anything about it, which I find extremely hard to believe. So I said, would you like to

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run a copy of it? They said, yes, we will. So we sat there with them that day, and I took them to this page where it said, Lifetime Silver Spur. It says that you're going to have first priority on away games, bowl games, tournament games, and so forth. You come down here and it says Lifetime Scholarship Donors. They have second priority to bowl games. Clearly right behind Lifetime Silver Spur.

And to clarify that, if you go to the next level, which is Silver Spur, if you'll follow it said, now they have third priority. They keep going and it says Full Scholarship, they got fourth priority. Half Scholarship is fifth priority, Roundhouse, sixth priority. It's really clear, the priority system. There's no question about what the priority system is.

But he said, well, that's not how I interpret it. I interpret it to mean that when everybody gets their tickets, you're second priority. And that's exactly how my seats have been issued since then. We even call in and ask if we'll get tickets and they tell me with my points, I may not even get tickets to away games.

So that's how far off the mark this has gone. That's what prompted our first discussion with the University. I wasn't trying to sue anybody. I just came

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in there and wanted to meet with Patrick McFarland and Jack Wilson. I brought my daughter with me because I wanted to discuss the tickets we got. The explanation they gave us was that they know nothing about this book. Their interpretation is that we had second priority, which means that after everybody got their tickets, we got our tickets, and that's exactly how it was happening.

I sat there with them at great length that day, in the office in the Roundhouse. You go into the left and Jack Wilson's office -- Patrick McFarland was in there. I went through this first, second, third, fourth, fifth, sixth, and Patrick said, I see what you're talking about. He said we're having a Gamecock board meeting next month. He said I'll bring that up with them, and Mr. Timmons, we'll get back with you.

I said, I really appreciate that because you have a problem. Your interpretation is wrong, and I don't care if you establish a new point system. You can do whatever you want with anybody other than the Lifetime Donors, but you have a lifetime contractual relationship. Nothing in this book, other than the lifetime deals, say that it's lifetime. So you can change the Silver Spur. You can change any other category and go to a point system. You can do anything you want to do, but the word lifetime means that these two categories have to be dealt

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with the way they were intended.

And Patrick McFarland, after the supposed board meeting, I called him and said, how did it go at the board meeting? And he said, we didn't discuss it. He said, you're going to be victim of the point system and right now it's kind of like the way we discussed and you're way down on the totem pole as far as points because you haven't contributed any money in the last ten to 15 years.

I said I don't have to contribute any money. So that's what prompted the first discussion with the University. At that time, there was really no discussion that they were going to take my parking place away because that had not emerged at that time. So then, all of a sudden, I'm fighting this battle. Then the seat license is an issue. I'm paying for the right to purchase the same tickets that I paid $20,000 for the right to have for my lifetime. I'm having to pay for the right every year to buy those same tickets. I'm paying for parking that I had a right to for my lifetime and my children's lifetime. You have seat licenses -- it just goes on and on.

And then they're going to take the parking places away from us. The other thing that I don't understand is that they took the parking places away

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because they were going to create this landscaped burm scenario, and last year the parking lot is full of cars, but they're not my cars. They took our parking places, and the parking lot is full of cars. Where I used to park, there's cars. For two years, cars.

And according to Ray Tanner the other day, they're not going to do the burm scenario probably for another couple years. But this year, the parking lot will be full of cars. I have to have a knee replacement, my wife has a major medical problem from a horse accident, and I'm having to walk and walk and walk across whatever that road is, and all that, when I was guaranteed for my lifetime that I could walk up to the elevator and take it up to my seats. Those are my complaints.

Q. Back to the priority ticket status. In your complaint, you made reference to several games that you attended. One would be the SEC game on December 4th, of 2010. Where were your seats at that SEC game?

A. In the upper deck. When we went to the SEC game that year and the Chick-fil-A Bowl -- I might get the two flip-flopped, but one of them, we were in the upper deck. I mean, literally, from here to that wall, next to the band. And I could look down and there was a sea of Gamecock fans in the end zone, basically. Between

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me and the end zone, it was nothing but a sea of garnet and black people sitting all the way to the 50-yard line, and that held true for the SEC game and the bowl game.

Q. Do you know the exact location of your seats for the SEC or the Chick-fil-A Bowl?

A. I don't, but I'm sure you all have the records because you all issued the tickets.

Q. Do you have any of the ticket stubs?

A. No. I don't know. I might, actually. I don't know. I can't answer that.

Q. How do you know that you didn't receive second priority?

A. Because I went in and talked to Patrick McFarland again. He came back to the same thing about your points. He said there are people that have so many more points than you. He said you got it based on your points. And I said, I'm going to say it one more time, Patrick. Lifetime Donors are not part of your points program.

You can take anybody, other than Lifetime, and set-up any kind of point system you want and be very legitimate, but you guaranteed for life, first and second priority to these two categories of donors, and you can't just throw a lifetime contract in the trash because you want to.

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I told Patrick, I said we go to the Signing Day events, I go talk to Ray Tanner, you hear him on the radio, and all they want to talk about is integrity, honesty and integrity, and making a commitment from these kids signing a verbal commitment and following through with a commitment when their own University won't honor a contract. They won't honor their own commitments, financially or otherwise.

So it's hard to expect from young people coming to this University to do anything different than their leaders do.

Q. In your complaint, you state that your priority would have entitled you to behind only the 3,500 Lifetime Silver Spur Donors. Why would you be the first in priority of the Lifetime Scholarship?

A. Our category -- in other words, within my category of Lifetime Full Scholarship Donors, you can go to a point system within that category, and I'm not saying that I would be the next in line, but my category would be second priority. And if someone said, Mr. Timmons, within your category of Lifetime Full Scholarship Donors, you were 19th or 199, or whatever, I can live with that. But that's not what happened.

Q. For the SEC game, were there any Lifetime Donors sitting near you?

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A. I have no idea. I don't go around asking people what they donated.
Q. How are you damaged by sitting in the seats that you received at the SEC game?
A. I don't need to answer that. How was I damaged? They were awful tickets. I would have never gone. I don't even go anymore to the games because if I do, I have to go to StubHub and buy them in the aftermarket, so I can get a decent ticket because the University won't honor their agreement to me.
I have to go to StubHub and sometimes pay four or five times face value to buy a ticket to go see a University of South Carolina sporting event that I was guaranteed the best or second best ticket. So that's how I'm damaged.
Q. What's the value of that damage?
A. I think we outlined that in our claim. I mean, there's some games that you pay $300, $400 a ticket, where the face value is $50, in order to get a decent seat because I'm not going to sit in the upper deck, next to the band, when there's a sea of garnet and black down there.
Most of those people haven't donated for 40 years, or whatever, and haven't donated the kind of money, and have a contract with the University.

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Q. Was it after the SEC Championship game that you spoke with Patrick McFarland?
A. I don't recall. It was after some sporting event, I can tell you that.
Q. I'll represent to you that your complaint says that you met with Patrick December 21, 2010.
A. That's correct. It was after some away games.
Q. Who was present?
A. Myself and Amy Mahoney, my daughter.
Q. Anyone else?
A. Jack Wilson. I don't know if he's still in the Gamecock Club or not, and also Pattick McFarland came and sat in on the meeting.
Q. And the meeting was at the Roundhouse.
A. It was.
Q. What did McFarland say at the meeting?
A. I've said it before, but I'll say it again. He had never seen this book before. He knew nothing about the priority that this granted me, and that their interpretation was that we had second priority. After everyone else got their tickets, then we'd get ours.
And after I explained this book, since it was the first time he'd ever seen it, he would take it up with the Gamecock Club because they had a board meeting coming up. What I advocated to him, I said in order to

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make the priority system work properly, what you have to do is you either have to put the Lifetime Donors to the side and honor your commitment to them and then do your point system, or you have to give the Lifetime Silver Spur Donors or Lifetime Full Scholarship Donors such a large sum of points, one-time shot in the arm of points in the system, that it basically takes care of the problem. He said that was a good thought, and he would take it up with the board.
Q. What did Jack Wilson say at the meeting?
A. He was just -- whatever Patrick McFarland wanted to say. They were both saying the same thing. Other than the fact that they had never seen this, and when I started to explain it to them and they wanted a copy -- they were kind of hostile at first. Then all of a sudden, they toned down and at end of the meeting, oh, we'll have our board meeting, and I'll get back with you.
Q. Other than McFarland and Jack Wilson, did you communicate in any way with anyone else at the Gamecock Club about the SEC game?
A. No.
Q. And then you claim that you also failed to get second priority at the Chick-fil-A Bowl game, correct?
A. Correct.
Q. And that was the bowl game that followed the

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SEC Championship, correct?
A. Yes. What was ironic was that the meeting with Patrick and Jack Wilson was actually from some away games that we went to. The same problem existed and that was what prompted it. And then Jack and Patrick said, well, we have our board meeting coming up. When the bowl games come up, we'll take care of you and make sure you're treated okay.
Well, when I got my tickets in the mail for those games, we did not get treated okay, and Patrick McFarland was actually out on vacation, wouldn't take my call. So after the bowl games, that's when I decided the only way to resolve this, we're going to have to do some type of litigation. Before we even tried litigation, I tried to meet with Patrick, and then it all started to come to a head. They were taking the parking places, you had seat licenses. The entire agreement we had paid for many, many years ago had gone to heck in a hand basket.
And as a last ditch effort before we filed a lawsuit, Patrick said, I'll tell you what, Gorden, if you come up here, I'll personally meet with you and take you across the street where the new parking places are going. And he said, I will let you pick out your parking place. And I said, well -- and I was trying to be reasonable, and I said, that's fine. I drove up, met in Patrick's

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office, he said, jump in the car with me. Let me show you where your parking place is going to be. I said, okay. So I jumped in his car, he drove me up to the stadium, and he and I went up the round-style all the way to the top. He said, I want you to see it from up here because construction was going on. He had a map of it with him, and he showed me the entire thing. He said, now, we're going to walk over there. I want you to just pick out what will suit you. I said, actually, my parking place where I'm at is what I want. He said, well, that ain't going to happen. He said, where would you like to go? He said, and by the way, because of your priority, you can have two parking places instead of one. I said, oh, really? He said, yup.

So he says you get one for every four tickets and you have eight tickets, so you get to have two parking places. I said, okay. I want them right there, and I showed him exactly where I wanted them. He said, okay, we'll do that, no problem. So we went back to his office. I said, so you're going to handle this? He said, yup, I'll handle it. So I called him back because it came up where they were going to start assigning those tickets, and I called him back and I said, I just want to make sure we're still right that I'm getting that. He said, no, we can't do that. I said, excuse me? He said,

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you're going to have your parking assigned by points.

So he really hoodwinked me again and left me -- so I didn't get those parking places. And then he says, well, when your number comes up, come to my office and I'll help you. I said, what does that mean, Patrick? He said, just come to my office, I'll take care of you. I went to his office when my time slot came up where I could pick my parking place, and he didn't help me. All he did was log in with my account number and said, okay, this is what's available. I could have done that from my home. He didn't do anything.

So we're over in pod two or three, wherever we are. It's a long, long walk. And we're paying for them, and Patrick McFarland is -- in face, on the telephone, everything, has never honored a thing that he said he was going to do. Period. And at that point, it became obvious that I had no choice but to seek litigation.

It makes me sad to sue the University that I love. It's hard for me to believe that you have to do that. And that I have to explain to my daughters and my grandchildren why we're suing the University. I just want them to do what we contracted to do back in 1907.

Q. The College World Series -- where were your seats?

A. Third base line, upper deck, next to the foul

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pole. Now, that rotated whether you were the home team or the away team, but even when it rotated, all it did was flip me over to the first base side, and we were on the foul pole on the first base side, so it flipped you from side to side depending on which side of the field your team was in the dugout.

Q. Who sat near you at the World Series?

A. My wife.

Q. Did you know anybody else that sat near you?

A. No. But my wife actually was very upset about our tickets, and she asked this couple that sat beside us, and this was one incident that we asked somebody, if you don't mind sharing with us, what is your level of contribution? I think the lady said they were a Full Scholarship Donor, just an Annual Full Scholarship Donor.

My wife asked them how long ago did you order your tickets because we ordered ours as soon as the application hit our desk. She said we got ours last week. So here's somebody with a Full Scholarship, went in there the week before Omaha, and gets their tickets. We sent them right off the shoot, and we're sitting next to these people. So then we asked some other people around us the same question. We weren't sitting around anybody except people that had gotten their tickets recently. There weren't any Lifetimes that I found.

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There could have been some but...

Q. Have there been any other away or bowl games for which you believe you didn't receive second priority?

A. Well, to be honest with you, yeah, all of the away football games. I don't even go anymore. I give them to my son-in-laws and my daughters because they're the worst seating there is, and I'm just not going to -- my wife is seriously injured.

She can't sit like in the bowl games, where you have the nice seating like we have at Carolina Stadium, she can sit in those, but she can't go to a football game and sit on a metal bleacher chair because she can't walk. So when it's obvious those are the tickets I have, either I won't order them anymore, or I'll just give them to my daughters.

Q. When was the last away game that you attended?

A. We went to the Outback Bowl this year.

Q. How were those seats?

A. Well, the only reason those were okay is because we paid for, what they call, the club level, concierge level. If we had just ordered regular tickets without paying the other $200 a seat for the concierge level, it would have been the same.

Q. When was the last away or bowl game that you've attended where you received tickets from the Gamecock

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Club?
A. The Chick-fil-A and the SEC years ago. Actually, I swore I was never going back to another bowl game until we resolved this, and when we actually got to go to Tampa, when Lou Holtz was around, I remembered they had that concierge level where you could pay the extra $200 a seat, and that actually would get you a decent seat, and because of that, we decided to go to the Outback, but that's the only thing we've been to.
Q. But the last away or bowl game that you attended where the Gamecock Club provided you seats, was the Chick-fil-A Bowl?
A. I believe so, yes.
Q. And that was back in 2010, correct?
A. I don't know when it was. It's the same year we did the SEC, whenever that was. And that's the same year that Jack and Patrick were going to take care of my seats, make sure that I got good seats, and then they were both on vacation when I got my tickets.
Q. What other postseason events have you attended?
A. Omaha.
Q. What years?
A. My wife and I went. We didn't go the first year they went to Omaha. We went the second year that they won back-to-back. And then last year, I went with

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my son-in-law for a few days.
Q. And you bought both of those seats off of StubHub.
A. Actually, I got some through the University and they were so bad again that I ended up buying them in Omaha from the guy that runs the Mattress Factory where they have the big bar at the stadium where they have the pregame parties. We got to know the owner of that, and he sold us tickets that were decent.
Q. Would it surprise you that the University now gives first priority to the Lifetime Silver Spurs and second priority to the Lifetime Scholarship members and then now they employ the priority point system?
A. That would totally shock me. If they're doing that, they should let people know that because that's not how they've been conducting business. But I agree, that's how it should happen, but I can call up on any event and talk to the ticket office and they'll tell me, Mr. Timmons, you're so far down on the totem pole that you're not going to get -- they'll tell you on the telephone.
Q. When was the last time you called the University and asked that question?
A. Well, for the Outback Bowl.
Q. For the Outback Bowl, they told you that you

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would not receive any tickets.
A. I didn't say that. They didn't say that. He just told me I was so far down the totem pole in points that there was thousands and thousands of people ahead of me because of my points.
Q. Who did you talk to?
A. I don't know. You call the ticket office, whoever -- they pull you up on the computer and say based on your points, that is what's going to happen. I said, well, that's just not going to fly. Then we went back and did the concierge level, and I think we ended up being on the 30-yard line. The seats for the Outback were fine, but we had to pay $200 extra, per seat, for four of them. $800 extra to be on that level.
Q. When did you first hear about the priority point system?
A. With this brochure in 1987.
Q. No. I apologize. The new priority point system of which you complained about.
A. You know, there were things passed around that there was going to be a point system, but still to this day, I don't think it should affect the Lifetime Donors. And until the point system kicked in, our seats had always been -- we were in the best area you could be at any game, any time. What happened was my son-in-law

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started going to like the Georgia game, and this, that, and the other, and he kept coming back saying our seats are awful. And it was obvious something had gone awry with the point system.
In October of 2010, it really slapped us in the face that year. I don't know if that's when the point system kicked in, but all of a sudden, all of our tickets to the away games, the seats were incredibly bad.
Q. Back to my question, when did you first hear about the new priority point system?
A. I just told you. In that era of time when all of a sudden tickets started being awful. It's just like this, what do they call it, the playbook? And they tell you all about your donations, whether they're refundable, whether it's this or that, and your priorities and all of those wonderful things.
That's not worth the paper it's written on because this is not worth the paper it's written on. This has no value. Anybody buying into this, shouldn't rely on it because you can't rely on this. I don't know how you could rely on anything, but I didn't believe the point system actually pertained to Lifetime Donors.
Q. And you still feel that the new priority point system adversely impacts your seats.
A. Absolutely.

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MS. DURANT: I'm going to ask Madam Court Reporter to mark this as Exhibit 7.

(Defendant's Exhibit 7, March 25, 2012 Letter to Patrick McFarland, marked for identification.)

BY MS. DURANT:

Q. Do you recognize this letter, Mr. Timmons?

A. Yes.

Q. Is it a letter from you to Mr. McFarland?

A. It is.

Q. Will you read the beginning of the last paragraph on the first page?

A. "I want to thank you for meeting with me March 12th."

Q. I apologize. I misled you. The last paragraph on the first page, starting with, I was also.

A. "I was also pleased to hear that you felt the that the priority structure for the allocation of tickets to away games, bowl games, and baseball postseason for Lifetime Donors has been resolved. As we know, the assignment strictly based on points does not meet the obligations that were guaranteed when these Lifetime contracts were purchased."

Q. That's good. What's the date of this letter?

A. March 25th.

Q. What did Mr. McFarland tell you about how the

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priority structure had changed? Or why were you pleased to hear that the priority structure had been resolved?

A. Well, this letter was in follow-up to that meeting that I told you I met with him and he said come up and you can get first choice of parking. And we had a wonderful meeting, he took me over there, he said you're going to get these two parking places, no problem. He said, I think we have it resolved going forward. We'll honor the lifetime programs. I said that's wonderful news because at that point, I didn't really think I had an issue with the University.

I mean, I didn't like the parking places, even those parking places, because they were not the parking places that I was guaranteed. But in lieu of bringing a lawsuit against the University, which I certainly did not want to do, if him trying to work with me and assuring me that priority had been resolved, and that I was going to have the parking places that I wanted, you know, I was willing to -- not happily, but I was willing to bite the bullet at that point, and let it go to the wayside. But everything in this letter turned out to be not true again.

Q. But how did he tell you that the problem had been resolved?

A. He just said they were going to redo the

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structure, and that didn't happen.

Q. How many away games do you attend a year?

A. Not many anymore because I'm not going to go sit in the seats they give us.

Q. How many?

A. Like I told you earlier, since the bowl game, we went to Clemson, I guess two years ago, went to Vanderbilt last year. Those were awful. There again, by the band in the end zone. Sea of Gamecocks between me and the 50 yard line. It was obvious we had resolved nothing as far as the priority.

So I'd say other than Clemson two years ago, Vanderbilt, and the Outback, that's probably been about it because I'm not going to fight this ticket issue again until it gets resolved.

(A recess transpired.)

BY MS. DURANT:

Q. Mr. Timmons, when you attend an away game or a bowl game, how many tickets do you usually buy?

A. I usually buy whatever they allow us to buy.

Q. Which is?

A. I want to say four. I think that's what they allow us to buy. We get four to away games, Clemson games, and bowl games.

Q. When you purchase from StubHub, how many

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tickets do you usually buy?

A. Usually four. There's one other couple that likes to go with us when we go to those kind of events.

Q. And since, let's say, 2010, you've attended the Chick-fil-A Bowl, the SEC Championship game, the College World Series, a Clemson game two years ago, a Vanderbilt game last year, and the Outback Bowl last year.

A. That was very limited because of my wife's injuries. She almost died at Vanderbilt Hospital, so through her rehab, actually, the year she was hurt, I would -- she's such a diehard baseball fan, I would put her in a wheelchair and she'd come to the Carolina baseball games.

We'd roll out and she'd sit at the top and watch the games in her wheelchair. We were very limited to what we could do that year; however, that year was the year we sat by the foul pole in Omaha, and she was still very much recovering from her injuries and was using a cane and was not getting around very well. So we had some awful seats in Omaha, and even though, like I said, she was recovering from her injuries.

Q. But other than the Chick-fil-A, the College World Series, the SEC Championship, the Clemson game, the Vanderbilt game, and the Outback Bowl, have you attended any other away or post season bowl games?

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A. The first year they won the National Championship in baseball, we went to the Super Regional and Coastal Carolina. We went there. I'm just trying to remember. That's probably the only thing that I can remember. We did go through there. I buy tickets now. My son-in-law and others will use them, but talking about me attending, that's the extent of what my wife and I have attended.

Q. In our interrogatories to you, we asked how you'd been damaged by all these complaints alleged. In your answers to interrogatories, you specifically say that you were damaged by not receiving first priority. Was that an error?

A. Well, it's second priority. Yes.

Q. So you intended --

A. I just meant the word priority.

Q. So the reference to not receiving first priority in your answers to interrogatories should have been second priority.

A. Correct.

Q. What's your proof for the difference in value between the alleged priority seats and the alleged inferior seats that you received from the Gamecock Club or University?

A. You can basically pull up any sporting event

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that's ongoing, even down to the final four, and go on StubHub today, and look at what tickets are versus what the face value is. You can do that for any sporting event, and there's more than just StubHub. There's other online entities that sell tickets, and typically, you know, for seats that I think I should have a right to, it's running anywhere from four to five times face value typically.

Q. Do you have the printouts from StubHub showing the differences?

A. I don't.

Q. Will you please produce that?

A. I don't understand.

Q. Will you please produce them to us pursuant to the discovery request?

A. What do you mean? Their website?

Q. In your answers to interrogatories, you stated StubHub tickets were worth X amount and that the value of the inferior tickets were worth Y. I just want to know what the proof is providing --

A. We'll have to go online and pick sample games. I don't have such a printout in my file, if that's what you're saying, but it's a matter of record for any sporting event.

Q. Do you have any proof that other Gamecock Club

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members were awarded those priority seats that you claim you did not receive?

A. Yes. Any game I ever went to. When I can look from the foul pole to home plate and there is a sea of garnet and black and I'm in the upper deck, in the foul pole. Yeah, I think that's pretty good proof that people got better seating than I got, otherwise we'd be in the parking lot watching it on TV.

Q. Do you know whether those were Gamecock Club members or not?

A. I have no idea. I'd say out of ten or $12,000 people with garnet and black on, there's probably one or two that are Gamecock Club members.

Q. One your other complaints is about the imposition of the seat license charge. When you first became a Gamecock Club member in the early '80s, what was the face value of a ticket to a game at Williams Brice?

A. I have no idea.

Q. What's the face value for a ticket at Williams Brice now?

A. It depends on the opponent. It ranges from $35 for Wofford to maybe $75 or $85 for Georgia.

Q. Were those the same prices that you paid in the early '80s?

A. Obviously not.

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Q. So it's fair to say the face value of the tickets has gone up.

A. And I have no problem with the face value of the tickets going up.

Q. And you voluntarily paid for those tickets, correct?

A. Correct.

Q. And you never claimed that you were entitled to free tickets.

A. No.

Q. And you never claimed that the ticket price must remain the same, right?

A. No.

Q. So if the seat license was added to the face value of the ticket, you wouldn't have had a problem with that, would you?

A. But it wasn't.

Q. But if it was, would you have a problem with it?

A. If everybody in the stadium had to pay $150 for a seat, and I elected to still go to the game, yes, I would pay the $150, but they don't. Because you can, for example, you can pick any game you want, go to the ticket office that day, walk up to the counter, and if the ticket price is $35, you can give them $35, and they're

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going to hand you a ticket. There's no seat license associated with that. The only people paying a seat license are the people with season tickets and want the right to purchase those particular seats which I was granted under my lifetime deal. That's different.

And a change in ticket prices -- I have no problem with. Things go up, and the SEC, and I understand new facilities. I understand all those wonderful things and I applaud what they're doing and I wouldn't be here in a lawsuit if Patrick McFarland did what he said he would do. But here we are.

Q. In your contract, which is marked Exhibit 2 to this deposition, will you show me in this contract where it says the University does not have the right or the ability to charge you a seat license fee?

A. Well, it doesn't use that terminology, but it says we have a right to those tickets. And if you go to my cover letter which was basically the counter offer, this was an offer. My counter offer was, here's $10,000 and if you agree to these certain things, I'm in. Great. Here's your signed contract, we're in.

So it was real clear that I'm getting the right to those particular tickets for my lifetime, and my daughters' lifetime, the parking places, and so forth. So under basic contract law, there's an offer, there's a

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counter offer, and there's an acceptance. And the consideration changed hands; therefore we had a binding contract.

Q. Where in the contract, Exhibit 2, does it say that you're entitled to a parking space?

A. It doesn't say it in the actual agreement, but the letter says if you want my $10,000, and you want to cash this check, these are the terms, and we'll agree to that.

Q. My question is, where in the contract does it say that you're entitled to a certain space?

A. That particular document in the contract -- it does not.

Q. Your letter, which I believe you just called a counter offer, was dated prior to the date of this contract, which is Exhibit 2, correct?

A. Right.

Q. So you informed the University of what the terms of your counter offer are, correct?

A. That's correct.

Q. Are the terms of your counter offer in this memorandum of agreement? It's Exhibit 2.

A. The question again.

Q. Does the memorandum of agreement, Exhibit 2 to this deposition, does it contain any of the terms, of

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your terms that you proposed and what you've entitled a counter offer?

A. Well, actually, it does. Yes. It says that the four season football tickets are best available. That means that at that time, best available is the ones that I had. It says I've been granted assigned parking, which I had, and I clarified in my counter offer that we were talking about a specific spot.

Q. The counter offer was dated prior to this contract, right?

A. Yes.

Q. Is there anything in this contract that says you're entitled to a certain space?

A. They acknowledged the assigned reserved parking. Do you notice the word assigned? It says assigned reserved parking. We put in my counter offer that I want to maintain my assigned reserved parking.

Here it says that I'm going to get assigned reserved parking, which I currently have.

Q. So you contend that you currently have assigned reserved parking?

A. Say that again.

Q. Is it your position that you currently have assigned reserved parking?

A. I don't understand the question. You mean now?

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Q. Today, do you have assigned reserved parking?

A. Not really. I'm having to pay for it, and it's not my assigned reserved parking. It's not acceptable.

Q. But is it assigned reserved parking?

A. It's assigned.

Q. Is it assigned reserved parking?

A. I just said it's assigned.

Q. How is that different than assigned reserved parking?

A. I don't understand your question. Do you want me to say all three words?

Q. Sure. Do you have assigned reserved parking today?

A. They have an assigned number. Yes. Not the ones that we agreed to, not original contract or even a subsequent contract, a verbal agreement with Mr. McFarland. Those are the two spaces that you're going to get. He reneged on that contract, too. That was a verbal commitment.

Q. Did you give any consideration for the alleged new oral contract with Mr. McFarland?

A. I don't understand that.

Q. Did you give him any money? Any land? Anything? Did you give him any consideration?

A. He sent back $12,000 that I sent him.

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Q. So he rejected your consideration.
A. Yeah. $12,000. Sent the check back, which I was shocked that in today's time, that Steve Spurrier or any of those guys would like to know that $12,000 was sent back.
Q. Back to the Lifetime contract, which is Exhibit 2. Where in this contract does it say that the University cannot impose a seat license charge?
A. Well, my interpretation -- I had seat licenses for Carolina Panthers. I've had them for different things. Seat license, if you right the seat license agreement, it says -- and I don't even think the University charges you a seat license. They don't even send you a seat license agreement, per se, so they can put whatever spin they want to put on it, but what it means is that you're paying for the privilege, the right, to purchase those specific tickets. That's what a seat license is. And I had that guaranteed to me for life in my contract.
Q. My question is, where is that in the contract?
MR. HIBRI: Object to the form.
THE WITNESS: I said it over and over. It's very specific in my letter when I said here's my $10,000. If you don't want my $10,000 under these terms, send the money back. Guess what? They didn't send the $10,000

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back then, like Patrick sent the $12,000 back. They took the money. Congratulations, look forward to having you, here's your executed contract. Wonderful. Three years in a row, $6,000, boom, boom, boom, here we go. And they honored all their commitments until the point system kicked in.
And now Spurrier, in his greater wisdom, and I'm all for Mr. Spurrier. Now we're doing away with parking, we're going to do this, we're going to do that. It's the same thing, if you want to put a new Interstate through your farm, they have to condemn your property, they have to talk about how much they'll give you for what they're taking away from you. If the University says, I'm going to technically condemn this parking lot -- that's basically what they did. It was a condemnation basically.
Under condemnation laws, I didn't have any rights to that. They didn't give me any rights, they didn't treat me like I had any rights. I have plenty of rights. It was a true condemnation, wrongfully taken, and contractually obligated for, and that's the problem here. In the truest sense of the word, it was condemnation.
Q. So in this memorandum agreement, there's no mention of --

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A. It says assigned reserved parking. And at that time, I had assigned reserved parking, and that's what I'm saying.
Q. Back to the seat license fee. There's nothing in the memorandum agreement that mentions, references, alludes to the fact that a seat license fee could not be imposed against you; isn't that correct?
A. There is no such thing. There was no such thing.
Q. But in other words, it's not referenced in this memorandum of agreement.
A. No. Because there was no such thing. There was no seat license. They never heard or thought about it. Carolina Panthers were one of the first that did it in this area, and everyone said, hey, that's a good idea. But I say again, during football season, you'll get these flash e-mails, and they say, guess what? You can buy a three-ticket pack, you can get Wofford, and I'll give you Arkansas, and I'll give you another trash game, but you can buy these three games, all face value -- no seat license, nothing.
So what they did is, they went to everybody in this book and said you have great tickets. You had them all these years. Now you need to start paying us for the right -- and I don't disagree with that beyond the

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Lifetime Donors. I really don't because the Lifetime Donors -- the word lifetime is real to me. I don't know if it's real to you, but I think a jury is going to like the word lifetime. It says lifetime.
I put a lot of faith into that word. I put a lot of faith into the University of South Carolina. When it says I'm going to have these tickets for my lifetime, that meant as long as I paid face value for that ticket, you have to give me those tickets. It didn't say should I superimpose some extra fees per seat that everybody in the stadium doesn't have to pay, but now all of a sudden you have to give me another $320 per seat for the right to buy those tickets that I was guaranteed for life. That's the problem.
Q. Were you guaranteed those tickets at a fixed price for life?
A. No. I never said there was a problem with the ticket prices. Next year if you all want to charge everybody in that stadium $320 per seat for the right to buy all the tickets, then I'll go along with you, but that's not what you're doing. But the Lifetime donors -- I'm sorry, folks. Lifetime is lifetime. We gave you -- do you realize in 1987, that a $40,000 lump sum -- it's a lot of money today, but it was a lot of money back then. So I was already getting everything. I was getting

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everything in this book that a Lifetime Donor got by just giving $2,500 a year. Why do you think I was willing to give you all that money in advance? Because the word lifetime. You can go to $50,000 a year for a Silver Spur, or whatever. My seats are lifetime. My parking place -- lifetime. The word lifetime is why you got that huge consideration payment.

Q. When were the seat license charges first assessed against you?

A. I don't know. Two or three years ago. I don't know.

Q. Does 2007 sound correct?

A. I have no idea.

Q. Do you have premium seating?

A. I don't know what they call premium seating.

Q. Are you on the 200 level?

A. No. I used to be, but I gave those up.

Q. In 2007, were you in the premium level?

A. Probably so. In addition to my other two. At one time, I had 14 tickets that I bought every year. I had a box. I had six seats in executive club level. When I sold my business, I used that for entertaining clients, and so forth. So when I sold my business, I didn't have a need for those seats.

Q. Would it surprise you that you paid $6,000 in

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2007 for a seat license charge?

A. That was for the level 2000. That's not for the eight tickets that I have. It was $1,000 a seat in the executive club level.

Q. What are your damages for the alleged breach by the imposition of the seat license fee?

A. Well, if myself, my wife, and my children, for their lifetimes, are going to be hung with a seat license, which is today X amount of dollars, and it can be at the will of the University to be whatever they want it to be. It's a huge sum of money over those years. A huge sum of money.

Q. We've already talked about this briefly, or a little bit. The assigned reserved parking issue, how has the University or the Gamecock Club breached its contract with respect to the assignment of parking?

A. It took my parking place. Condemned it, took it, didn't discuss it, didn't give me any legal rights to it. They took it away without compensation. You know, I want my parking place back. I don't want your money. I want my parting place back. So put my space right in the middle of a green, pretty burn, next to a tree, and I'll be a happy guy.

Q. Did you ever get a response to your letter, in which you said, I would like for my space to remain the

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same?

A. Yeah. My check was cashed. That's a good response when you cash $10,000.

Q. Did you ever get any other response from the University or the Gamecock Club?

A. No.

Q. Did anyone associated with the Gamecock Club or the University --

A. Well, let me clarify. I had a verbal conversation when we did this all on the phone. I made it real clear with Chip then, exactly what I put in that letter, that we're going to have the same parking place, same tickets, same everything, I could sell my business, I was going to get a plaque. If I stopped at $25,000 -- all of that was discussed in that letter, and it was drafted in that counter offer -- here's my $10,000. If this meets your approval, we're good, take my money. We're good. Take my money. I gave you $6,000 three years in a row beyond that, so evidently you didn't disapprove because you took another $18,000. So, yeah, I figured we had a deal. We had a contract.

Q. Did Chip Clary or anyone at the University ever assure you that you would receive space 779 for the rest of your Lifetime contract?

A. You keep saying 779. I don't know if that's

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the same number, and I'll just tell you why. My last year I parked over there, you had already taken my parking place, and you put me somewhere else because they were putting in an emergency generator where my parking place sat.

And then maybe a couple years prior to that, they did some renumbering. The space was the same but the number -- they renumbered some spaces, but the physical on the ground never changed until that last year that I parked over there. And they moved me over and backed us up against the Old State Paper building because physically the generator was going where my parking place was.

Q. But did anyone associated with the University assure you a space on the apron? The apron surrounding the stadium, did anyone at the University or the Gamecock Club assure you that you would have a space on the apron for the rest of your Lifetime contract?

A. Yes.

Q. Who?

A. The letter I sent you with $10,000 assured me of that. If you didn't want my $10,000, you should qualify my letter and say, Mr. Timmons, we'd love to have you, but I cannot promise you that parking place for your lifetime. Mr. Timmons, I cannot guarantee you those

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seats for your lifetime. And if you'd like to reconsider, we'll go from here. That's not how it went down. My letter says if everything is okay with you, deposit this money, and let's go for it. That's exactly what the University did, and it's not just the Gamecocks, folks. It's signed by the University of South Carolina. You all keep saying Gamecock Club. We have -- the University signed it.

Q. In the document that the University signed, is there any reference to space and the apron?

A. Assigned reserved parking. At that point in time, I had assigned reserve parking space number X, whatever it was, and it was covered by the counter offer. I can say this for the next 30 days, if you want me to, but it's the same answer.

Q. Other than your letter, did anyone else from the University or the Gamecock Club assure you a space in the apron for the duration of your contract?

A. No.

Q. We've already touched on this, but in your complaint you reference a meeting with Patrick McFarland on March 20, 2012. And in your complaint you said the purpose of the meeting was to agree upon a comparable parking space to space 779, in premium north or premium south of the Farmer's Market. Will you please tell me

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about that meeting.

A. I've already given you that meeting. Do you want me to repeat it?

Q. Please do.

A. Okay. Patrick called me -- actually Toni Day, I think that's his administrative assistant. She sent me an e-mail and said that Patrick McFarland would like for me to come meet with him to discuss my picking out my assigned parking place at the new deal and when was I available. We agreed on the time. I drove up that morning, walked in, he was just as nice as he could be. We sat down, he showed me the layout, how wonderful it will be. He said, how about jumping in the car with me. Let's go pick out your parking places. I said, great. I got in his car, not my car.

He drove me over to the University. We went through the gates, up the turnstiles to the top of it, so you could overlook Bojangles and all that stuff there. And he had his little chart there, and he said where do you want to be? I said, well, do you see those big oak trees right there in the VIP section? That's when he told me he was going to give me two parking places. Nothing special for me, he said anybody that has four -- if you're a certain level donor, you can have one parking place per four tickets. You have eight tickets, so you

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can have two parking places. I said, great. I said, I want two parking places that back up to the trees because there's a nice green space behind it. He says, fine. I'll make sure you get those. He said, just check back with me in May because in May they're going to start assigning everything, and I'll just make sure you get those. So when I got the e-mails that they were blasting out to Gamecock Nation that they were going to start assigning these parking spaces, I contacted Patrick on the phone, and I said, are we good to go on these parking places? He said, no, we're not. I can't do that. And I said, I don't understand. What do you mean you can't do that? I mean, I even followed up with a letter confirming our meeting and our conversation. No response until I contacted him and he had said, no, I can't do that.

So all of that was bogus. He said, well, I can't do it. I said, what are you doing, Patrick? He said when your slot comes up, if you'll come to my office that morning, I'll work you through it, and I'll get you a good spot. I went there trying to believe one more time that Patrick McFarland was going to try and do something on a positive note because everything else has been lies and lies and lies. I get there, and I said, what are we doing? He said, well, we have to wait for

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your slot to come up. I said, I don't understand. He said, when your slot comes up -- you had two or three minutes to look at the screen and put a dot or an X where you want it to be. He said, when your slot comes up, we'll pick out your slot. I said, well, Patrick, I'm really confused. I could have done that from my house on my computer, but you assured me that you were going to try and do something special for me.

I was still trying to believe that day, foolishly, obviously, but for some reason I believed that at that last second, we were still going to be able to put Xs where we talked about, backing up to the trees. Otherwise, why was I driving to Columbia? Foolishly, I believed maybe he was going to do something like that. It was foolish because all he did was what I could have done from my home, and I left there very, very upset.

Q. In your first meeting with Patrick, what did he do or say that led you to believe that you were assured or assigned those spaces next to Bojangles?

A. He took me over there, showed me the spaces, we picked them out. He said, do you want this one or this one? I said, those two right there. He said, I'll make sure you get those. Another lie from the University and the Gamecock Club. And, you know, in business, after a meeting, I always follow-up our understanding of our

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meeting. Here's our understanding. He told me in that same meeting that you had the priority system resolved, which you didn't. So this is a letter to confirm what he told me that day. He didn't call me back and say wait a minute, no, no, I didn't say that. No. And then, it's like -- and then he won't return your phone calls. Toni Day will say he's not in, he's on vacation. It's like when the bowl tickets came out where he was supposed to make sure I got the best tickets known to man, he's going to look out for me. Not only did I get the worst seats in the house, but I was told that he was on vacation and that he wouldn't be back until after the bowl game.

Q. So anything other than his statement that I'll make sure that you get those and your letter confirming the meeting, did Patrick communicate anything else that made you feel that you were assigned those two spaces?

A. No.

Q. Was it just you and Patrick at that meeting?

A. It was.

Q. Did you speak with anyone else at the University or the Gamecock Club that led you to believe that you were entitled to receive those two spaces?

A. No.

Q. Would the University or the Gamecock Club have breached its contract with you if you were assigned those

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spaces under the tree?

A. I don't understand.

Q. Would they have breached the contract if --

A. Which contract?

Q. Your Lifetime membership contract, would they have breached that contract if you had received those two spaces next to Bojangles?

A. Yes. They would have. They have definitely breached my contract, but I actually came to a meeting in the road. I told you I didn't want to sue the University of South Carolina, and after this meeting, I basically told Patrick, I said, Patrick, if I get those two parking places and you have resolved the priority problems, I think we're good. And it was lies. None of it was good. So, no. That would not have unbreached them breaching the contract, but we wouldn't be here today doing depositions because I would have probably never brought a lawsuit.

MS. DURANT: I'm going to ask Madam Court Reporter to mark this Exhibit 9 and hand it to you.

(Defendant's Exhibit 9, January 10, 2011 Letter From Gorden H. Timmons, marked for identification.)

BY MS. DURANT:

Q. Mr. Timmons, do you recognize this letter?

A. Yes.

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Q. On the second page, the second full paragraph, will you please read that.

A. I feel that the issue --

Q. No. I'm sorry. The second full paragraph that begins with, To continue.

A. "To continue we have enjoyed our current stadium-side parking place for around 30 years. When our current stadium-side parking space is eliminated and an allocation for our new space is assigned we should receive our parking space allocation after Silver Spur Donors and not as part of your point system. This will comply with our privileges as promised in your contract."

What I meant by that is, if you condemn -- do a condemnation, which I have no control over, then my next best recourse is if you condemn everybody's parking places and you do it legally, which you didn't do, you know, I want my priority, and that didn't happen. They issued park places strictly on the point system again, and I was way down on the totem pole.

MS. DURANT: I'm going to ask Madam Court Reporter to mark that as Exhibit 10 and hand it to you.

(Defendants' Exhibit 10, E-mail, marked for identification.)

BY MS. DURANT:

Q. Do you recognize this document, Mr. Timmons?

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A. Yes.

Q. Is your e-mail address, gordentimmons@bellsouth.net?

A. It is.

Q. What does the last sentence of your e-mail say?

A. "I urge the University to honor their legal obligations by giving me a priority selection time that will assure our location in the VIP are." That's based on our agreement with Patrick.

Q. Is it still your position that if you received those parking spaces next to Bojangles that would still be a breach of your Lifetime membership contract?

A. Yes. This was in an effort to basically not have to do litigation, which we left that a long time ago.

Q. So your statement in the e-mail is incorrect.

A. It's just like when two attorneys meet and you get ready to go to trial and there's offers that fly across the table about how much money and everything at the end is negated and you go to trial. It's the same thing. Everything that you try to do to resolve an issue, if it didn't resolve the issue, then the issue is still the issue, and, yes, there's still a breach contract. Yes.

MS. DURANT: I'm going to ask Madam Court

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Reporter to mark this as Exhibit 11 and hand it to you.
(Defendants' Exhibit 11, E-Mail from Jeff Crane, marked for identification.)
BY MS. DURANT:
Q. Mr. Timmons, I'll represent to you this is a proof of an e-mail from the Gamecock Club. It was e-mailed to each Lifetime member. Did you receive a version of this e-mail addressed to you?
A. I don't recall, to be honest.
Q. Look at --
A. If they blasted it to everybody, I probably did. I don't recall the e-mail though.
Q. Is gordentimmons@bellsouth.net your only e-mail address?
A. It is.
Q. Is that the one that's registered with the Gamecock Club or with the University?
A. I'm sure it is. Yes.
Q. Would there be any reason to suspect that you did not receive Exhibit 11, if it, indeed, is a blast e-mail that was sent to all Gamecock members?
A. Well, I say this kind of -- I can't really tell you that because two years in a row, I didn't get invited to Signing Day for football, and I contacted the University, and I said under my agreement, when they

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first started Signing Days, I was invited, and then all of a sudden, I was no longer invited. So I called the University and asked about that. And they said, well, Mr. Timmons, those e-mails went to you. And I said, no, they didn't. So it depends on the time of day and who you talk to because the Gamecock Club said, well, we sent it to you, I'm so sorry you didn't get it.
Well, I didn't get it. I reviewed everything, and I never got it. So to say a blast went out -- I can't tell you that I got this because selectively when they want to blast something and exclude me, obviously they've been able to do that. I could have got it, but I'm not guaranteeing that I got it.
Q. Because we received Exhibit number 10 from Mr. McFarland that has your e-mail, and I've seen several other e-mails from you. We didn't receive any e-mails in the discovery production, even though we requested them.
A. I don't have them.
Q. Can you not search your e-mails?
A. I'm trying to tell you, and my wife can vouch for this. We had our -- our computer was -- I only have e-mails that go back probably about seven months because of computer problems, and that's not a convenience. It's been a real problem even in my business.
Q. Did you search your e-mails to respond to our

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discovery request?
A. I just explained. I didn't have any e-mails that went back that far.
Q. Any e-mails? Did you search for e-mails for any communications that were responsive to our discovery request?
A. Say that again.
Q. Did you search your e-mails for any communications that were responsive to our discovery request?
A. I didn't have any e-mails.
Q. But you have e-mails seven months ago, correct?
A. I haven't communicated with the Gamecock Club in the last seven months. Since the lawsuit.
Q. Your complaint also references a March 28th conversation with McFarland. What was that conversation about?
A. Where does it reference? Where are you saying it's referencing?
Q. It's in your complaint. I believe it was a conversation -- paragraph 33 of your complaint, it says, "On or about March 28, 2012 Mr. McFarland told Mr. Timmons that parking spaces will be assigned based on the new priority point and ranking system." Can you tell me about that conversation.

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A. Yeah. That's the conversation when I told you I called him back after, and he said he wasn't going to honor our meeting on March 20th. He said he couldn't do that. It was going to be strictly points, and that's just the way it was going to be.
Q. What did you say in response to McFarland saying it was going to be strictly by points?
A. I told him that wasn't our agreement. And I think I even told him, I said, it seems like every time I meet with you, whatever you say doesn't mean anything. Something to that effect. I'm paraphrasing.
Q. Did you all discuss anything else?
A. That's when he told me when our time slot came up that he would do something for me in May or whenever that time slot came up. Toni Day called me and told me when my time slot was going to be and please be at Patrick's office because he wanted to do it with me.
Q. And then you went to Patrick's office and chose your spaces.
A. Uh-huh. Like I said, anybody on the computer at home could have done it, and he didn't do anything special, but, yes, we did.
Q. In other words, you participated in the online parking selection system.
A. That's all we did. Yes.

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Q. What spaces did you select?
A. I don't know the numbers. I think it's maybe space 6 and 7 in quad 2. Something like that. I think that's pretty close.
Q. Other than McFarland, did you communicate verbally, in writing, with anyone else associated with the University or the Gamecock Club about the location of your parking spaces?
A. It's my understanding, Patrick McFarland is the head. But, no, I did not.
Q. Which football games did you attend this year?
A. Home games?
Q. Yes, sir.
A. I think every one of them. I very seldom miss a home game, unless I'm sick. I actually had a horse accident myself and literally was on crutches and still walked from quad 2, all the way across on crutches and a cast on my foot to get to my seats on the other side.
Q. Did you like your new parking spaces?
A. They're okay. I'd rather have my old one. You know, we didn't even make the VIP area. Not only did we not get the spaces we wanted, we didn't even make the VIP area. We're over on a grassy quad somewhere.
Q. What problems do you have with your new parking spaces?

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A. Its proximity to the elevator. As far as, you know, age, and my physical handicaps and my wife's, as we're getting older. One of the things that's most important about lifetime was the proximity to my elevator. I could be in my 80s and 90s and still see the Gamecocks play.
Q. Anything other than the proximity to the elevator?
A. Not really.
Q. What are your physical handicaps?
A. I need knee replacements. That's about it.
Q. Are you getting those anytime soon?
A. Soon as I get on Medicare. I have a $10,000 deductible now, so that has to wait.
Q. My father is getting them on tax day. Should be an interesting week. How have you been damaged with respect to the assignment of the parking space?
A. Well, I just said again. It's the proximity to the elevator, getting older, not being able to see my Gamecocks play because of that problem, the new parking across the way. You have handicap parking places, but you don't have any way to get the handicapped people over to the stadium, so I don't know what you've really accomplished. I'm parked in a handicap space now, but if that was four blocks from your building, what did you

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give me? If it's handicap four blocks from the building. That's really the issue. At some point in time, it will limit me to going to the games.
Q. In your complaint, you claim that the court should declare that you're entitled to retain space 779 or that the University must provide comparable assigned parking, correct?
A. Correct.
Q. What parking would be comparable?
A. Within the same proximity to the elevator. And if you look at the overview, I believe there is going to be some parking in the new design. So just carve me out one of those. And until you do that, if there's going to be thousands of cars over there in the next few years, why is my car not over there? I don't want to be there temporarily, and then all of a sudden I'm out of there. I don't understand what's going on at the University.
Q. Has anybody told you why they moved parking off the apron?
A. They didn't is the whole point. They said they were going to put in a grassy burm design with nice walkways. I think it will be pretty, but you're taking away a tradition that's been there 40, 50 years. When I was at Carolina, I graduated in 1970, you know, it was there. I mean, you're taking away things. The other

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thing you took away, which you can't replace, is if you parked in the same parking place for 30 years, you have the same people who have parked next to you for 30 years. You have long-time relationships that have existed. As much of the enjoyment of the game was to go and enjoy the camaraderie with the people you've been around for 30 years. Tailgating is as much fun as the game. Now all of a sudden, you're thrown four blocks across the road in a grassy field with people you don't know. Not that you won't get to know them, but I mean, you know, what we knew as Gamecock football just basically disintegrated.
Q. After 9/11, did you hear any word as to why they're moving parking off the apron?
A. No.
Q. Next -- were you going to say anything?
A. I mean, no matter what reason you want, it's legally a condemnation to take. It's just like taking your house because they want to put a road through it.
Q. In your complaint, you also assert that if the University fails to provide you with comparable reserve parking, then you're entitled to the actual monetary value of space 779, correct?
A. Yeah. I don't know how you can replace it is the problem.

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Q. That was my next question. What's the monetary value of space 779?
A. I think it's pretty hefty. I don't know how you replace it. How do you put a value on -- I'm in my 60s, and I can no longer watch Carolina watch football because I have no way to get in the elevator. You can't put a value. I mean, there's a value, but I think it's something for the court or the jury to decide what that value is.
Q. In your answers to our discovery request, you placed a value on that space.
A. Well, in an attempt to put some value.
THE WITNESS: I need to take a break.
MS. DURANT: Sure.
(A recess transpired.)
(Defendants' Exhibit 12, Answers to Interrogatories, marked for identification.)
BY MS. DURANT:
Q. I'd like to go back to my question as to what you think the actual monetary value of the space is.
A. Well, I don't believe you can actually put a value on it, but I guess the attempt here was, if you had to try and put a value on it, you have to base -- you took $28,000, you did not honor -- it's a breach of contract.

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So that along with interest earned, I think the attorneys computed that to be a $140,000, basically.
Q. The consideration that you put in was the $28,000, right?
A. Correct.
Q. And you're asserting that your damages should be the return of that $28,000, correct?
A. Right.
Q. Are you asking a court to find that this contract is rescinded?
A. No. That's just the parking place that you took away.
Q. But aren't you asking the court to return to you the full consideration that you put into the contract?
A. Well, let me explain this to you. There's people that just got four seats right next to us at Carolina stadium that we've had for 30-something years. They're just Full Scholarship, a regular Scholarship Donor paying their annual dues, and they're sitting next to me. It's also the policy of the University of South Carolina that you get your -- this is one of the fallacies of the seat assignment, which is a seat license. Until anybody chooses to change their seat assignments, they'll have the same seat assignment that

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they had last year. The twist of that now is there's a little caveat of the seat license. If you're willing to pay that, you'll keep your seat.
So under that premise, you know, we'll pay our seat license, which I don't think we should be paying. And I wouldn't have any parking. That's fine. I'll resolve it some other way. But you don't give me priority for tickets anyhow, so that's out of the window. You're charging me for parking, which I shouldn't be paying for, and you're also charging me a seat license.
So my premise is that, you know, you have seat licenses and all these problems.
Q. But with respect to the damages that you've suffered for parking, the removal of your space for 779, you're seeking a return of the $28,000 you paid, correct?
A. That's where the capitalization came from. Yes.
Q. Because you put 28 grand into the contract.
A. The real value of it is -- can't even be quantitated. I don't think you can put up a number of what it's worth.
Q. But you're asking the court to return the full consideration you put into the contract, correct?
A. Plus interest. Yes.
Q. Would the University be entitled to offset the

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damages owed to you by the value of the rights, the benefits, the privileges that it has afforded to you?
A. I don't understand the question.
Q. If you're asking for the full consideration that you put into the contract, aren't you asking the court to say that no contract ever existed?
A. What I'm saying to you is just like I said earlier. In order to resolve an unpleasant situation, we're talking about doing a negotiation of a settlement. So I think we're talking about a settlement here. We're talking about -- I mean, you've breached the contract and you've breached it in every category, basically.
Patrick McFarland has continued to breach verbal agreements. This is a premise for us to decide what is of value of consideration, if we're going to try and resolve our differences.
Q. So the University has breached it in every capacity. Is that what you said?
A. Well, as far as seat, priority seating, the seat license, priority parking spaces, yes. They have.
Q. In the next page of your answers to interrogatories, you also claim that the loss of the space on the apron has caused you to suffer $150,000 of damages. Are your damages the $28,000 plus interest?. Or is it the $150,000?

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A. I mean, those two numbers are close. It's the 150 or the 140, whatever.
Q. Did the University or the Gamecock Club breach its contract when it moved you from space 779 by the stadium to space 1065 by the stadium?
A. Yes. But I couldn't park on top of a generator.
Q. Regarding the charge for parking, when were the parking charges first assessed against you?
A. I don't recall. It's been in the last few years or so.
Q. Does fall 2009 sound about right?
A. That's possible.
Q. Did you ever pay those parking charges under protest?
A. No.
Q. Did you ever let the University or the Gamecock Club know that charging for parking was a breach of contract?
A. No.
Q. Where in the contract does it provide that parking is free?
A. Well, the fact that it had been free prior to the solicitation, the counter offer, and acceptance. It had continued to be free for 25 years or 30 years.

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Q. That's not exactly my question.
A. Well, that's my exact answer.
Q. Where in the contract does it say that parking is free?
A. It doesn't say that. It says assigned parking.
Q. Do you have any document concerning the Lifetime membership that says parking in the apron around Williams Brice was to be free?
A. I think a 30, 40-year precedent is free. Yeah.
Q. So no document.
A. No.
Q. Has anyone at the University or the Gamecock Club told you that parking was going to be free?
A. Chip Clary, originally.
Q. What did he say?
A. Well, this is what it's going to cost every year to be a Silver Spur Donor. You have these seats, you get this parking space to use, and we've used it for 35 years, whatever it is, 37. And it says in there that I have the use of that parking place the rest of my life. So after 35 years, my life is not over, and all of a sudden you're going to charge me for it. They haven't asked for money until recently, so, yeah.
Q. My question was, when did Chip Clary tell you the parking was free?

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A. It was free prior to even become a Lifetime. If you had it assigned, it was free. And when we covered in our cover letter or counter letter, we talked about we're going to continue to have that parking place. I mean, the word free isn't there.
Q. And Chip Clary never mentioned the parking was going to be free.
A. But it was free.
Q. But did he ever say it was going to be free?
A. It was free. But, no.
Q. No? Chip Clary did not say it was free.
A. No. Why would mine be free if everybody's was free that was a major donor. Now, people that weren't major donors were paying back then, if you recall. In the fairground, there were people that were paying for parking, but if you were a certain level, it was free. So you would believe as that continued, it would continue to be free. So you had a category where people were paying, but at a certain level you didn't pay anymore. Now, 30 years later, let's change the rules. Now you need to pay, too.
Q. What are your damages with respect to the parking charges?
A. We've been through that.
Q. We haven't.

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A. Yes. We have.
Q. Will you please tell me again.
A. Well, if you figure out our Lifetimes, and if it's $500 or $750 -- $750 is what it should be, but even if it's $500, I think if you'll equate how many years are left out that it would be free.
MS. DURANT: Can you all give me about five minutes to look through my notes and we should be done.
(A recess transpired.)
BY MS. DURANT:
Q. Just some housekeeping matters, Mr. Timmons. Who besides Mr. Hibri and Mr. Mason -- who have you talked with about this lawsuit?
A. Just my family. My daughters and my wife.
Q. Anyone else besides your wife and daughters?
A. Specifics of the case? No.
Q. In our discovery request, we asked for all documents maintained or possessed by Plaintiffs or anyone acting on their behalf relating to the Plaintiffs' complaint set forth in the complaint. Back to my question about your e-mails.
Did you search your e-mails for any documents relating to claims set forth in the complaint?
A. Say that again.
Q. In your e-mails, did you search them to see if

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they related to the claims set forth in your complaint?
A. I guess the answer is yes because I didn't have any e-mails.
Q. Did you search them?
A. I searched and saw there was none.
Q. So you did search your e-mails.
A. Yes. Well, let me just say one thing. The attorneys had -- when we first met a long time ago -- I have no e-mails on my computer that date back that far. Now, I don't know when we started this case, whether there was any e-mails. I mean everything that I have, they have, so I don't know.
Q. So you have not searched your e-mails.
A. I don't have any to search on my computer.
Q. How do you access your e-mail? Is it online or through Microsoft Outlook?
A. It's online.
Q. So how do you not have e-mails?
A. I just to go to gordentimmons@bellsouth.net. My e-mails don't go back that far.
Q. The short answer is that you have not searched your e-mails.
A. They're not there to search.
Q. Have you searched your e-mails?
A. Tell me how to do that, please.

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Q. I don't know your program, but have you searched your e-mails?
A. I have. It seems like you have them, so I don't know why we're searching.
Q. Regarding the parking. You're asking for a return all the consideration of your Lifetime membership, correct?
A. I'm asking for a sum of money to cover the loss of my parking place. You can call it whatever you want. We're saying that the loss of the parking place is worth $150,000, and that equates to the fact that as I grow older, I'm not going to be able to go to the games. It's going to be a problem for my wife and I. We're saying that's a value that we're assessing for loss of that physical parking place.
It's easy to make it go away. And the nice burm out there, close to the elevator. Give me a spot back that's within a reasonable distance of the elevator within the same distance I used to be, and we're good on the parking place.
Q. Could the University provide any other accommodations that would help out with your disability?
A. I don't know what that would be.
Q. Golf cart rides.
A. The fallacy of that is they have golf cart

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rides, but they pick you up and they take you through the VIP and then they drop you off. So you've only gained about 200 feet.
Q. So they don't take you to the stadium.
A. No. They do not.
Q. They don't cross Bluff.
A. No. They do not. As I pointed out earlier, the way I understand it, there is still going to be some parking at the stadium even with the burm and the landscape features. There are going to be people that are considered VIPs that are still parking there. And I'm trying to tell you that I'm a VIP, and I want my parking place back.
Q. How do you know that?
A. That I'm a VIP?
Q. No. How do you know that parking is going to stay in the stadium?
A. I've seen some overall conceptuals where they've shown some limited parking around the apron.
Q. Who showed you that?
A. McFarland had drawings about the plans and what was going to happen. Morris and Sheila Kroger, who are mega donors. I'm a peanut compared to what they donate to the University. They have their cockaboose, and if I have to guess, I think they're going to be included in

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that VIP list. I'm just saying there's a way to resolve it, and that could be part of it.
Q. And the sketches or drawings that McFarland showed you, did it have an area set that was labeled VIP parking?
A. It didn't have VIP parking, but it's a conceptual. The final schematic might not have a single parking place, but I don't think that was the original intent. It would be -- 95 percent of it would go away.
MS. DURANT: I think we're finished. Thank you, Mr. Timmons.
(The deposition concluded at 12:25 p.m.)

CERTIFICATE OF REPORTER

I, Lisa A. Garson, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on the 1st page of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 12th day of April, 2013, at Greenville, Greenville County, South Carolina.

_____

Lisa A. Garson,
Court Reporter
Notary Public
State of South Carolina
My Commission Expires:
December 19, 2019

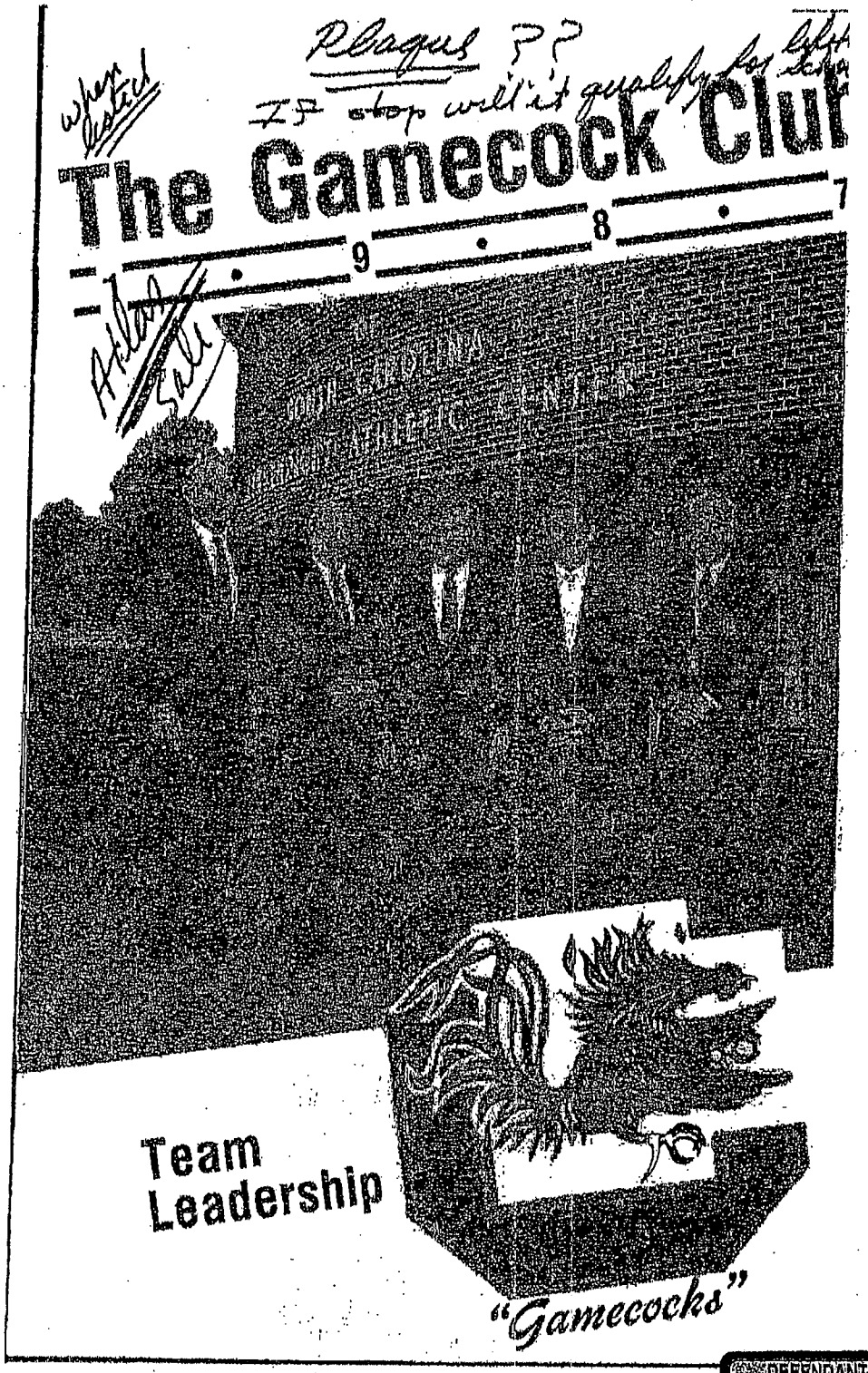
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EXHIBITS

Defendants'		
1	Copy of Original Gamecock Club Brochure	19
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(NOTE: Exhibit 8 was not marked.)



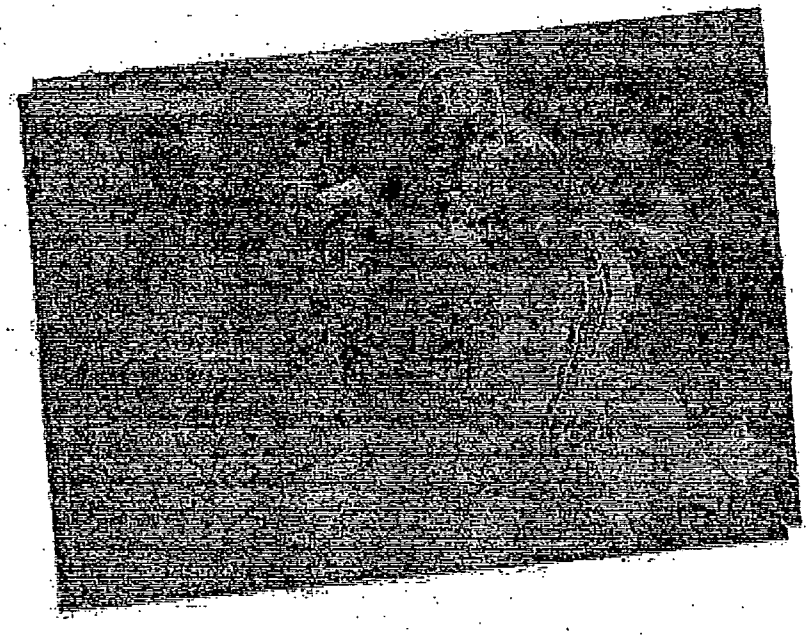
DEFENDANT'S
EXHIBIT
000392

LEVELS OF CONTRIBUTIONS

LIFETIME SILVER SPUR

$40,000 or more (may be pro-rated over a 5-year period)

— Four Season Football tickets (Best Available). First Priority.
— Additional Four Season Football Tickets. Second Priority. (Total of 8)
— Assigned Reserved Parking.
— First priority on Away and Bowl Game Tickets.
— Tickets may be assigned to one designated heir.
— Four Season Basketball tickets (Best Available).
— Assigned Reserved Parking at Coliseum (If Available).
— First priority on Away and Tournament Game Tickets.
— First priority on any tickets involving any other South Carolina Athletic Events.



LIFETIME SCHOLARSHIP

$25,000-$40,000 (may be pro-rated over a 5-year period)

— Four Season Football Tickets (Best Available). First Priority.
— Additional Four Season Football Tickets. Second Priority. (Total of 8)
— Assigned Reserved Parking.
— Second priority on Away and Bowl Game Tickets.
— Tickets may be assigned to one designated heir.
— Four Season Basketball Tickets (Best Available).
— Assigned Reserved Parking at Coliseum (If Available).
— Second priority on Away and Tournament Game Tickets.
— Second priority on any tickets involving any other South Carolina Athletic Events.

FULL SCHOLARSHIP

$1,000 Annual Contribution

— Four Season Football Tickets (Best Available). First Priority.
— Additional Four Season Football Tickets. Second Priority. (Total of 8)
— Assigned Reserved Parking.
— Fourth priority on Away and Bowl Game Tickets.
— Four Season Basketball Tickets (Best Available).
— Parking Pass (Park Street Lot).
— Fourth priority on Away and Tournament Game Tickets.
— Fourth priority on any tickets involving other South Carolina Athletic Events.

HALF SCHOLARSHIP

$500 Annual Contribution

— Four Season Football Tickets (Best Available). First Priority.
— Additional Two Season Football Tickets (Best Available). Second Priority (Total of 6)
— Parking Pass — Half Scholarship Area — General Parking.
— Fifth priority on Away and Bowl Game Tickets.
— Four Season Basketball Tickets (Best Available).
— Fifth priority on Away and Tournament Game Tickets.
— Fifth priority on any tickets involving other South Carolina Athletic Events.

ROUNDHOUSE

$250 Annual Contribution

— Four Season Football Tickets (If Available).
— Parking Pass in Roundhouse Area on first come first serve basis, limited space.
— Sixth priority on Away and Bowl Game Tickets.
— Two Season Basketball Tickets (Best Available).
— Sixth priority on any tickets involving other South Carolina Athletic Events.

CENTURY

$100 Annual Contribution

— Two Season Football Tickets (If Available).
— Seventh priority on Away and Bowl Game Tickets.
— Two Season Basketball Tickets (Best Available).
— Seventh priority on any tickets involving other South Carolina Athletic Events.

* Current Century Club members with four season football tickets will maintain priority on those seats.
* First year USC Graduates are offered a one-year honorary membership in the Century Club.

ROOST

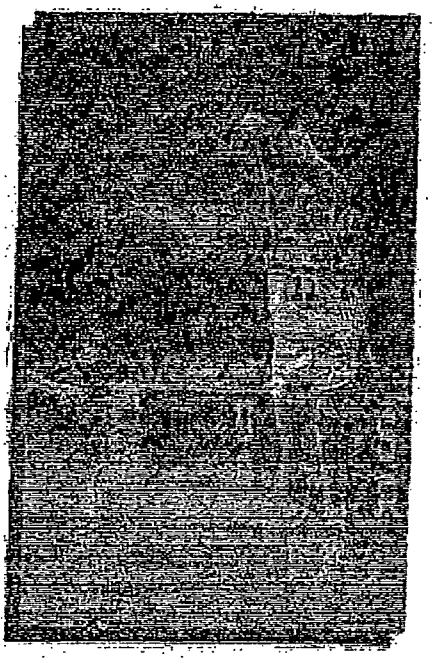
$50 Annual Contribution

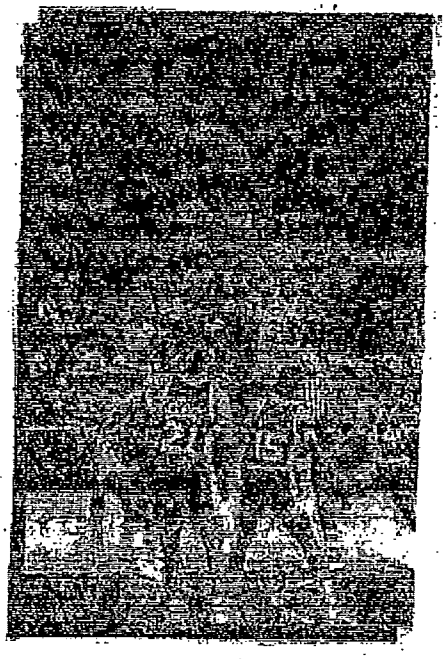
— Football Tickets not available.
— Basketball Tickets not available.

SILVER SPUR

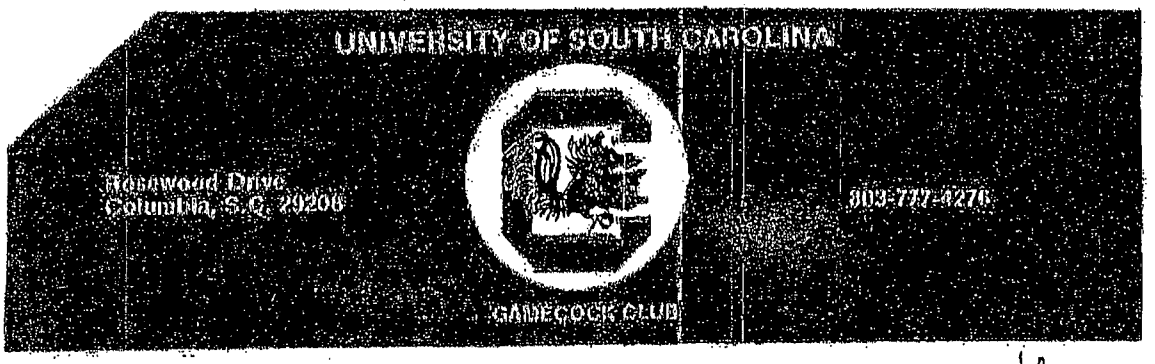
$2,500 Annual Contribution

— Four Season Football Tickets (Best Available). First Priority.
— Additional Four Season Football Tickets. Second Priority. (Total of 8)
— Assigned Reserved Parking.
— Third priority on Away and Bowl Game Tickets.
— Four Season Basketball Tickets (Best Available).
— Assigned Parking at the Coliseum (if Available) or Parking Pass in Park Street Lot.
— Third priority on Away or Tournament Game Tickets.
— Third priority on any tickets involving any other South Carolina Athletic Events.





Ex 2



Booster #214106

March 9, 1987

Atlas Electric Co., Inc.
Mr. Gordon H. Timmons
3290 Ashley Phosphate Rd.
North Charleston, SC 29418

Dear Mr. Timmons,

Enclosed please find your copy of the fully executed Lifetime Silver Spur Agreement with all the necessary signatures. If you have any questions or need any additional information please do not hesitate in contacting me.

Thank you again for your fine support of Carolina Athletics.

Sincerely,

Chip Clary
Director

CC/kos

Enclosure

Attitude Motivational
10/7/2010

DEFENDANT'S EXHIBIT
Timmons
5-13-13
000401

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT made this 17 day of Feb, 1987, by and between Atlas Electric Company, c/o Gordon H. Timmons, hereinafter referred to as the "Donor" and the University of South Carolina Gamecock Club, hereinafter referred to as the "Gamecock Club".

WITNESSETH:

FOR AND IN CONSIDERATION of the mutual covenants contained herein, the parties do hereby agree as follows:

1. Donor has contributed Ten Thousand and No/100 Dollars ($10,000) to the Gamecock Club .

2. Donor has agreed to contribute the additional sum of Thirty Thousand and No/100 Dollars ($30,000) payable in annual installments of Six Thousand and No/100 Dollars ($6,000) beginning in 1988 and ending in 1992 for the privilege of being a Lifetime Silver Spur Member of the Gamecock Club with all benefits appertaining thereto.

3. The Gamecock Club hereby acknowledges receipt of Ten Thousand and No/100 Dollars ($10,000) and agrees that in exchange of the receipt of Ten Thousand and No/100 Dollars ($10,000) and the pledge for the additional Thirty Thousand and No/100 Dollars ($30,000), Donor will be designated as a Lifetime Silver Spur Donor with all the privileges and benefits pertaining thereto as set forth in the attached Exhibit A, attached hereto and made part hereof and the terms of which are incorporated herein by reference. In accordance with said attachment, Donor will have the opportunity to purchase eight (8) football tickets and four (4) basketball tickets

4. The Gamecock Club agrees that the privilege and benefits of this membership will be transferred to Donor's daughters, Amanda Elizabeth Timmons (4 football tickets and 4 basketball tickets), for her lifetime only, and Amy Elizabeth Timmons (4 football tickets and 4 basketball tickets), for her lifetime only, upon death of Donor.

5. The funds contributed by Donor under the terms of this Agreement shall be deposited in a University permanent endowment account of which only the income derived therefrom may be spent as determined by the Gamecock Club.

IN WITNESS WHEREOF Donor has caused these presents to be duly authorized and the University of South Carolina Gamecock Club has hereunto set its hand and seal on the date first above written.

DONOR

By: Gordon H. Timmons (L.S.)

Date: Feb 17, 1987

THE UNIVERSITY OF SOUTH CAROLINA

By: J. Steven Beckham (L.S.)
J. Steven Beckham
Chief Executive Assistant
to the President

Date: 2/26/87

THE UNIVERSITY OF SOUTH CAROLINA
GAMECOCK CLUB

By: Chip Clary (L.S.)
Chip Clary
Director, Gamecock Club

Date: Feb 23 1987

EXHIBIT A

LIFETIME SILVER SPUR

$40,000 or more (may be pro-rated over a 5 year period).

-Four season football tickets (best available).

-Additional four season football tickets (total of 8).

-Assigned reserved parking.

-First priority on away and bowl game tickets.

-Tickets may be assigned to one designated heir.

-Four season basketball tickets (best available).

-Assigned reserved parking at Coliseum (if available).

-First priority on away and tournament game tickets.

-First priority on any tickets involving any other South Carolina athletic event.

GAMECOCK CLUB CHAPTER PRESIDENTS

Chapter (By County)	Director	Chapter (By County)	Director
Abbeville	John T. Broome	*Lexington	Herbert Sharpe
Aiken	Tom Young	Marion	Jimmy Crews
Allendale	Walter H. Sanders	Marlboro	Mickey Brigman
Anderson	Mike Thompson	McCormick	Charlie Sanders
Bamberg	Jack Early	Newberry	Tony Chapman
Barnwell	Bill Mobley	Oconee	Neil Alexander
Beaufort	Jim Gooding	Orangeburg	Gary Walsh
Berkeley	Ski Zolnierowicz	Pickens	David Sizemore
Calhoun	Babe Nelson	Richland	Gerald Watson
Charleston	Donald Bailey	Saluda	Dr. R. C. Rollings
Cherokee	Roger Huskey	Spartanburg	Sidney Dunlap
Chester	Mike Hairr	Sumter	Keith McElveen
Chesterfield	Sidney Sutton	Union	Paul Bell
Clarendon	Frank Jones	Williamsburg	C. G. Bass
Colleton	Bill Padgett	York	Harry C. Falls
Darlington	Steve Fagan	Charlotte, NC	William Wilkins
Dillon	Gene Varn	Atlanta, GA	Ron Barton
Dorchester	Cecil Buddin	Augusta, GA	Earl Barton
Edgefield	Jimmie Coleman	Asheville, NC	Fred Rutledge
Fairfield	Billy Melton	Toccoa, GA	Don Cleveland
Florence	Herbert Ames	Winston-Salem, NC	James C. Cook
Georgetown	Mike Carter	Raleigh, NC	Ken Allen
Greenville	Gene Covington		
Greenwood	Curt Harmon		
Hampton	Mary Ellis	**ADDITIONAL CLUBS**	
Horry	Sam Thurman	North Charleston	Woody Gregory
Jasper	Mike Thomas	Downtown Charleston	Ms. Charlie Andrews
Kershaw	William R. Lane	East Cooper	Bobby Hartin
Lancaster	Benjie Gregory	West Ashley	Philip Pinckney
Laurens	Gill Thomas	St. George	Richard Phalen
Lee	Dr. Forest Evans	Golden Strip	Ted Keller

* Chairman

EXECUTIVE COMMITTEE

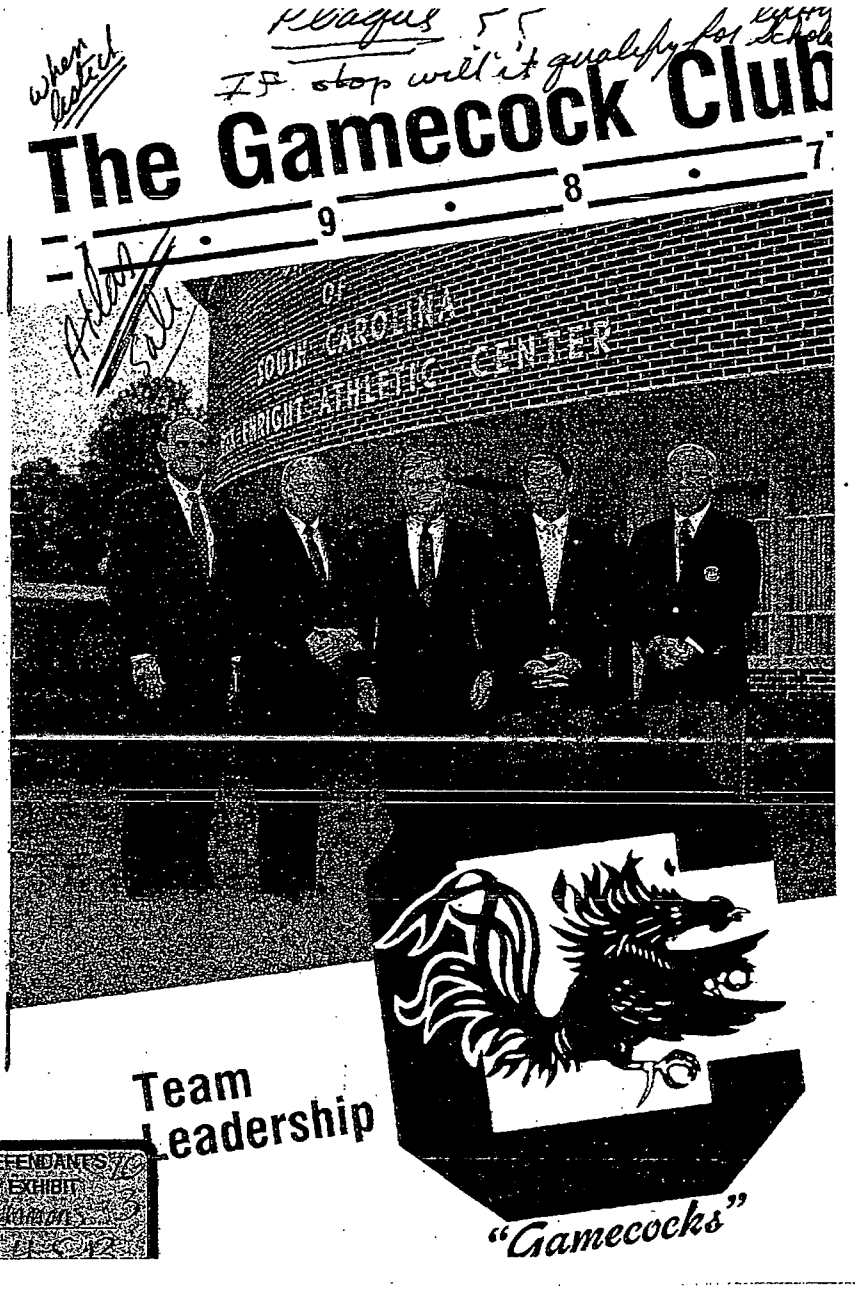
Member	District	Member	District
Kenneth S. Ott	1st Judicial District	Julian Stoudemire	10th Judicial District
Miles Loadholt	2nd Judicial District	Charles Connelly	11th Judicial District
*Murdoch Walker	3rd Judicial District	F. L. McIntyre	12th Judicial District
**J. P. Dowd, Jr.	4th Judicial District	Bud Hagood	13th Judicial District
Jim Hollingsworth	5th Judicial District	John Perry	14th Judicial District
David Forlaw	6th Judicial District	Jimmy Cromartie	15th Judicial District
Dr. Randall Moss	7th Judicial District	H. I. DePass	16th Judicial District
Marvin Watson	8th Judicial District	Louis Sossamon	Trustee Representative
Donald Bailey	9th Judicial District		

*Chairman
**Vice Chairman

000405

On the front cover, standing left to right: Athletic Director Bob Marcum, Chairman of the Board of Directors Herb Sharpe, President Holderman, Chairman of the Executive Committee Murdock Walker, and Executive Director Chip Clary.

DEFENDANT'S
EXHIBIT
3
12

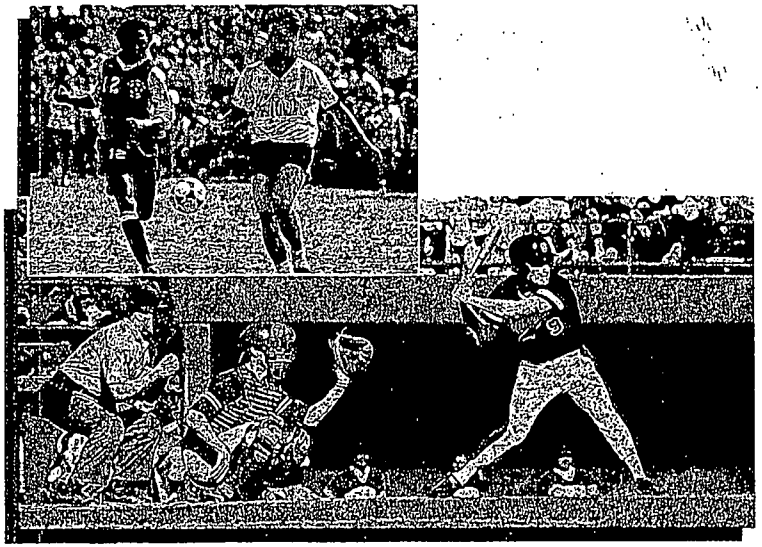


BUILDING A STRONG FOUNDATION

The University of South Carolina Gamecock Club has a rich tradition of support from thousands of loyal fans and friends. People around the nation both in the academic and athletic community recognize the support and participation the Gamecock Club members have demonstrated in the past decades.

Millions of dollars over these past years have created facilities and programs that benefit the USC student-athlete.

The members of the Gamecock Club can be proud of their achievements and take pride in knowing the University of South Carolina Gamecock Club is one of the leading organizations in Division I of the National Collegiate Athletic Association.



SEATING AREAS

Seats will automatically be reassigned based upon the **previous year's assignment**. Any requests for change in seating will be reviewed by priority beginning with upper levels of continuous giving.

WILLIAMS-BRICE STADIUM TICKET ALLOTMENT

Students	13,500
Visitors	12,000
USC Administration, Faculty & Staff	6,000
High School Coaches	1,600
Gamecock Club	39,300
	72,400

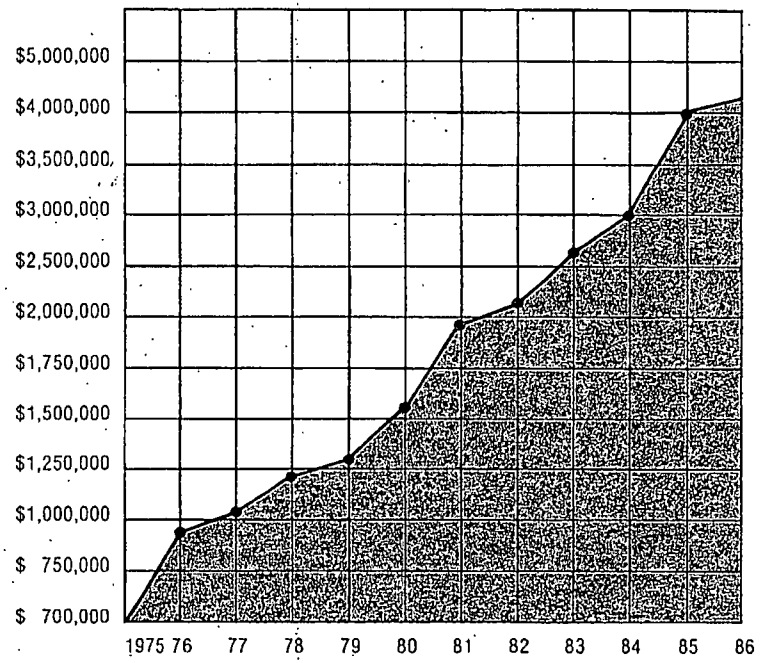
CAROLINA COLISEUM ALLOTMENT

Students	4,887
USC Administration, Faculty & Staff — Athletic Dept.	1,895
Gamecock Club	5,347
	12,129

1986 GAMECOCK CLUB MEMBERSHIP

Silver Spur	183
Full Scholarship	1,614
Half Scholarship	2,406
Roundhouse	2,426
Century	4,634
Roost	857
Associate	12
	12,132

FINANCIAL GROWTH!



CONTRIBUTIONS RECEIVED

Fiscal Year	
1975 —	$ 753,000
1976 —	912,000
1977 —	1,004,000
1978 —	1,154,000
1979 —	1,263,000
1980 —	1,575,000
1981 —	1,904,000
1982 —	2,108,000
1983 —	2,651,000
1984 —	2,861,000
1985 —	4,022,000
1986 —	4,076,784

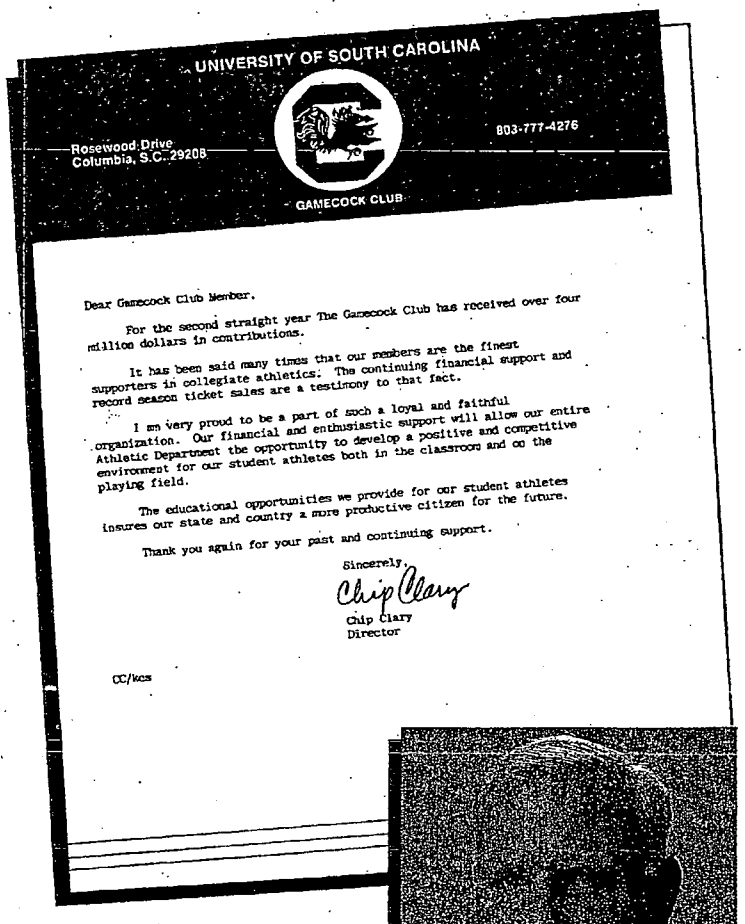
1986 GAMECOCK CLUB RESERVE FUND

1985-86 — Revenue	$4,076,784
— Endowed Income	114,464
— Invested Income	37,963
— Total Income	4,229,211
— Total Expenditures	3,376,230
— Balance to Reserve (1986)	$ 852,981

RECAPITULATION OF GAMECOCK CLUB ASSETS

Total Cash Reserve (1985 $562,401)	$1,415,382
Endowed Funds	197,856
Endowed Real Estate	100,750
Other Property	6,500
Quasi Endowed Funds	131,621
Held In Trust for GCC by Others	397,247
	$2,249,356

1987 GAMECOCK CLUB STAFF



UNIVERSITY OF SOUTH CAROLINA

Rosewood Drive
Columbia, S.C. 29208

803-777-4276

GAMECOCK CLUB

Dear Gamecock Club Member,

For the second straight year The Gamecock Club has received over four million dollars in contributions.

It has been said many times that our members are the finest supporters in collegiate athletics. The continuing financial support and record season ticket sales are a testimony to that fact.

I am very proud to be a part of such a loyal and faithful organization. Our financial and enthusiastic support will allow our entire Athletic Department the opportunity to develop a positive and competitive environment for our student athletes both in the classroom and on the playing field.

The educational opportunities we provide for our student athletes insures our state and country a more productive citizen for the future.

Thank you again for your past and continuing support.

Sincerely,

Chip Clary

Chip Clary
Director

CC/wcs



Chip Clary is in his third year as executive director of the Gamecock Club, having been named to that post, Sept. 12, 1984. Clary was executive vice-president for sales with Columbia Outdoor Advertising, Inc., and he had previously worked for Liberty Mutual Fire & Casualty Insurance Co., and for Universal CIT Credit Corp. Chip is a native of Columbia, a 1960 graduate of Dreher High School and attended The Citadel, Wingate College and South Carolina. He and his wife, Lydia, have two daughters — Amanda Ross, 20, and Mary Elizabeth, 19.



Dennis Toney

Dennis Toney is in his third year with the University and second year as the assistant director of the Gamecock Club. Toney is a former head football coach and athletic director in the high school ranks. He graduated from Bridgewater College, where he was a three year letterman as an offensive guard. He received his Master's from Virginia and Ohio University in Sports Administration. Dennis and his wife, Pam, have a son, Drew, 7, and daughter Allison, one.



Kim Stanley
Office Manager



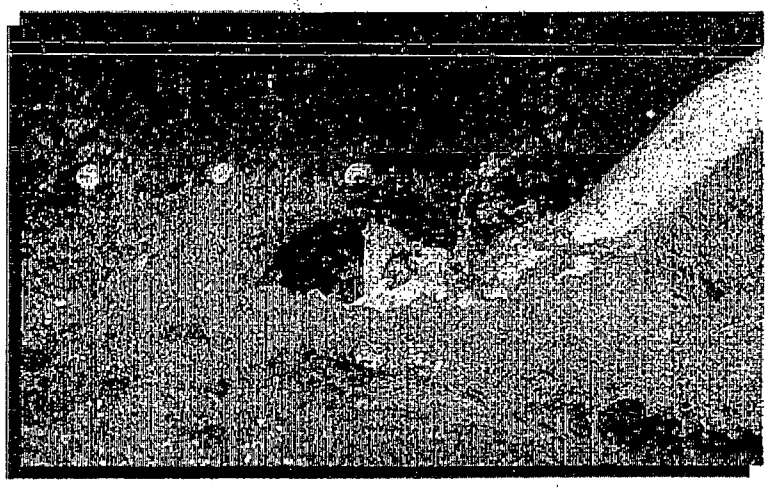
Sandra Miller
Business Office



Annette Whitworth
Secretary, Club Relations



Dani Bruce
Receptionist/ Secretary



JUNIOR GAMECOCK CLUB

The Junior Gamecock Club was organized in September of 1985. Its purpose is to provide information on the University of South Carolina's various educational opportunities and the activities of the Athletic Department.

Membership is restricted to boys and girls between the ages of six (6) and fourteen (14). The initial membership fee is $20.00 and $10.00 for renewal each year.

Members receive a quarterly newsletter emphasizing campus activities, helpful hints on diet, study habits, recreation, etc. and special articles from Professors or Deans of the various colleges. Also, they receive information on student-athletes and athletic events. In addition each member receives a "Cocky" t-shirt, a wall poster, a pencil caddy and a membership badge.

There are currently two planned activities. One such activity is at Christmas with Santa Claus and Cocky. The other is held during Spring Practice when the membership is invited to meet the football team and all other sports team members and coaches that are active during the Spring.

The Junior Gamecock Club's membership totals 829 from 16 states. South Carolina has 757 members with 72 others from 15 different states: North Carolina — 35; Florida — 4; Virginia — 2; Connecticut — 1; Pennsylvania — 1; Alabama — 1; Maryland — 1; Georgia — 16; West Virginia — 3; Tennessee — 2; Indiana — 2; California — 1; Illinois — 1; Texas — 1.



TICKETS



Jim Petrus
Ticket Manager

Jim Petrus is no stranger to Gamecock athletics having played football at USC and worked as assistant business manager. He has been the athletic ticket manager for the past two years.



Chris Massaro
Assistant Ticket Manager

Chris Massaro was named in August as the assistant ticket manager after serving a year and a half as an intern in the department. Massaro is a 1983 graduate of Northern Colorado and received his Master's from Ohio University.

GENERAL TICKET INFORMATION

DEADLINES:

To receive a ticket application in time for priority seating deadlines, membership pledge cards should arrive at the Gamecock Club Office no later than March 15, 1987.

YOUR TICKET APPLICATION WILL SERVE AS A RECEIPT OF YOUR PLEDGE. If you have not received a ticket application by April 15, 1987, please notify the Ticket Office.

To maintain priority seating, season ticket applications must be received in the Ticket Office no later than May 15, 1987.

ALL TICKET APPLICATIONS ARRIVING AFTER THE MAY 15 DEADLINE WILL NOT BE INCLUDED IN THE PRE-SEASON ASSIGNMENT BUT WILL BE FILLED FROM ANY REMAINING TICKETS.

If you do not receive an acknowledgement within two weeks of your order, please contact the Ticket Office. **The acknowledgement form sent out from the Ticket Office is not a guaranteed purchase agreement but merely a notice that your application has been received.** Full payment for tickets must accompany your ticket application, including the necessary handling. Tickets are normally mailed during the first week in August. Individual home game tickets and away game tickets are normally mailed in the third week in August.

INDIVIDUAL GAME TICKETS:

Orders for individual home games will be filled if tickets remain after satisfying all season ticket requests. INDIVIDUAL TICKETS ARE ASSIGNED ACCORDING TO CONTRIBUTION LEVELS. Six game books and six game over priority books take precedence over individual ticket orders.

Individual away game tickets will be filled if tickets remain available after satisfying all priority requests from season ticket purchasers.

GAMECOCK CLUB TIMETABLE

January 1	Membership Applications Mailed
March 15-May 15	Season Ticket Applications Mailed to Members enrolled for 1987
May 15	Season Ticket Applications Deadline. All Applications Received after May 15 Will Not Retain Previous Year's Priority.
August 1	Season Tickets Mailed
August 20	Away Game Tickets & Individual Game Tickets Mailed
September 15	Basketball Ticket Applications Mailed
October 15	Basketball Season Ticket Deadline. All Applications Received after October 15 Will Not Retain Previous Year's Priority.
November 1	Basketball Season Tickets Mailed

1987 TICKET POLICY

The Gamecock Club was founded to provide a means for funding scholarships and related cost of scholarships for the student-athletes at the University of South Carolina.

Participation in the Gamecock Club entitles its members the opportunity to purchase tickets at Williams-Brice Stadium and the Carolina Coliseum in sections provided for Gamecock Club members.

The seating is assigned by priority based upon years of continuous membership in various levels of giving and continuous years of season ticket purchases. Season tickets are generally assigned for all home games; **however if demand** for season tickets exceeds the number available, season books **will be comprised of tickets** for games which **are available.**

Specifically, if you received temporary seven game season tickets in 1986 and/or six game season tickets in 1985, there is a good possibility that you may or may not receive priority seven game tickets in 1987. For the past two years (1985 & 86) ticket demand from Gamecock Club members has far exceeded our supply of seven game season tickets.

1987 REFUND POLICY

In the event ticket applications exceed ticket supply, a refund will be forthcoming in the full amount of the ticket order as soon as possible. Please allow 6 to 8 weeks following the date that tickets are mailed to season ticket purchasers.

000409

TICKET ASSIGNMENT PROCESS FOOTBALL AND BASKETBALL

ALL NEW ASSIGNMENTS BASED ON AVAILABILITY

SEASON TICKETS:

— Previous Season Tickets are re-assigned FIRST!
— Lifetime Silver Spur seat change requests by priority.
— New Lifetime Silver Spur tickets assigned.
— Lifetime Scholarship seat change requests by priority.
— New Lifetime Scholarship tickets assigned.
— Silver Spur seat change requests by priority.
— New Silver Spur tickets assigned.
— Full Scholarship seat change requests by priority.
— New Full Scholarship tickets assigned.
— Half Scholarship seat change requests by priority.
— New Half Scholarship tickets assigned.
— Roundhouse seat change requests by priority.
— New Roundhouse tickets assigned.
— Century seat change requests by priority.
— New Century tickets assigned.
— Individual home game tickets assigned if available.

AWAY GAME & BOWL GAME TICKETS:

Ticket allotment to the various levels will be determined by the number of tickets allotted to the Gamecock Club for distribution.

— Lifetime — by priority.
— Silver Spur — by priority.
— Full Scholarship — by priority.
— Half Scholarship — by priority if available.
— Roundhouse — by priority if available.
— Century — by priority if available.

CLEMSON AND GEORGIA AWAY GAMES

CLEMSON

Current Allotment: 8,500

Lifetime & Silver Spur:	4 tickets
Full Scholarship:	2 tickets
Half Scholarship:	2 tickets (As long as available by priority)
Roundhouse:	2 tickets (If available by priority)

GEORGIA

Current Allotment: 6,500

Lifetime & Silver Spur:	4 tickets
Full Scholarship:	2 tickets
Half Scholarship:	2 tickets (As long as available by priority)
Roundhouse:	2 tickets (If available by priority)

ALL OTHER AWAY GAMES

Allotment of tickets will be distributed by priority: 4 tickets per order — Additional requests will be fulfilled based on availability.

BOWL GAMES

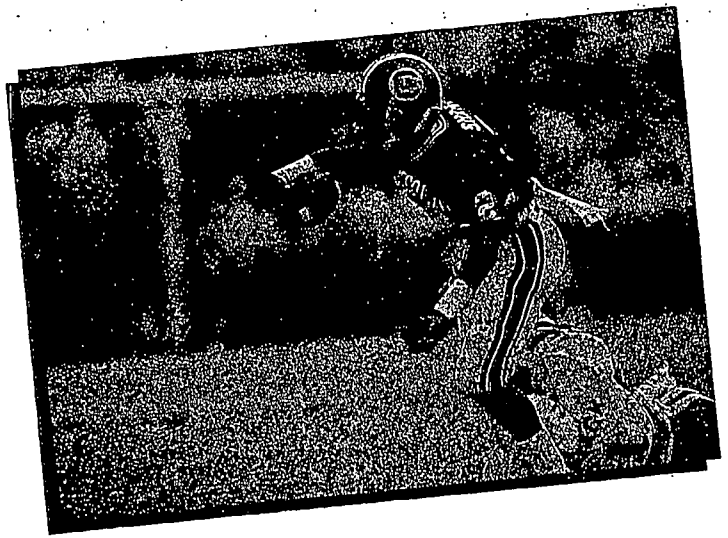
Upon determining allotment, tickets will be distributed by priority based upon numbers set forth by the Athletic Department, Ticket Office and Gamecock Club Board.

LEVELS OF CONTRIBUTIONS

LIFETIME SILVER SPUR

$40,000 or more (may be pro-rated over a 5-year period)

— Four Season Football tickets (Best Available). First Priority.
— Additional Four Season Football Tickets. Second Priority. (Total of 8)
— Assigned Reserved Parking.
— First priority on Away and Bowl Game Tickets.
— Tickets may be assigned to one designated heir.
— Four Season Basketball tickets (Best Available).
— Assigned Reserved Parking at Coliseum (If Available).
— First priority on Away and Tournament Game Tickets.
— First priority on any tickets involving any other South Carolina Athletic Events.



LIFETIME SCHOLARSHIP

$25,000-$40,000 (may be pro-rated over a 5-year period)

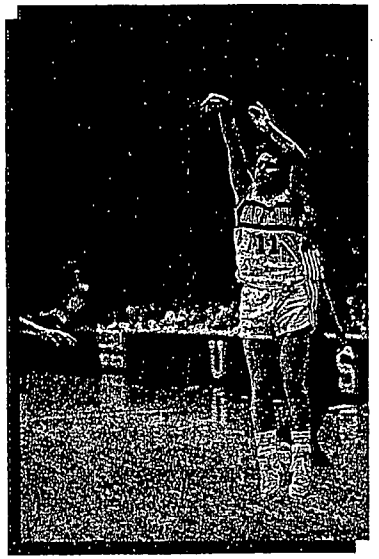
— Four Season Football Tickets (Best Available). First Priority.
— Additional Four Season Football Tickets. Second Priority. (Total of 8)
— Assigned Reserved Parking.
— Second priority on Away and Bowl Game Tickets.
— Tickets may be assigned to one designated heir.
— Four Season Basketball Tickets (Best Available).
— Assigned Reserved Parking at Coliseum (If Available).
— Second priority on Away and Tournament Game Tickets.
— Second priority on any tickets involving any other South Carolina Athletic Events.

SILVER SPUR

$2,500 Annual Contribution

— Four Season Football Tickets (Best Available). First Priority.
— Additional Four Season Football Tickets. Second Priority. (Total of 8)
— Assigned Reserved Parking.
— Third priority on Away and Bowl Game Tickets.
— Four Season Basketball Tickets (Best Available).
— Assigned Parking at the Coliseum (If Available) or Parking Pass in Park Street Lot.
— Third priority on Away or Tournament Game Tickets.
— Third priority on any tickets involving any other South Carolina Athletic Events.





FULL SCHOLARSHIP

$1,000 Annual Contribution

— Four Season Football Tickets (Best Available). First Priority.
— Additional Four Season Football Tickets. Second Priority. (Total of 8)
— Assigned Reserved Parking.
— Fourth priority on Away and Bowl Game Tickets.
— Four Season Basketball Tickets (Best Available).
— Parking Pass (Park Street Lot).
— Fourth priority on Away and Tournament Game Tickets.
— Fourth priority on any tickets involving other South Carolina Athletic Events.

HALF SCHOLARSHIP

$500 Annual Contribution

— Four Season Football Tickets (Best Available). First Priority.
— Additional Two Season Football Tickets (Best Available). Second Priority (Total of 6)
— Parking Pass — Half Scholarship Area — General Parking.
— Fifth priority on Away and Bowl Game Tickets.
— Four Season Basketball Tickets (Best Available).
— Fifth priority on Away and Tournament Game Tickets.
— Fifth priority on any tickets involving other South Carolina Athletic Events.

ROUNDHOUSE

$250 Annual Contribution

— Four Season Football Tickets (If Available).
— Parking Pass in Roundhouse Area on first come first serve basis, limited space.
— Sixth priority on Away and Bowl Game Tickets.
— Two Season Basketball Tickets (Best Available).
— Sixth priority on any tickets involving other South Carolina Athletic Events.

CENTURY

$100 Annual Contribution

— Two Season Football Tickets (If Available).
— Seventh priority on Away and Bowl Game Tickets.
— Two Season Basketball Tickets (Best Available).
— Seventh priority on any tickets involving other South Carolina Athletic Events.

* Current Century Club members with four season football tickets will maintain priority on those seats.
* First year USC Graduates are offered a one-year honorary membership in the Century Club.

BOOST

$25 Annual Contribution

— Football Tickets not available.
— Basketball Tickets not available.

80411

MOST OFTEN ASKED QUESTIONS

What is the Gamecock Club?

The Gamecock Club is a nonprofit organization whose primary purpose is to provide scholarships and certain related costs for student-athletes in each of the men's and women's intercollegiate sports.

Who Operates the Gamecock Club?

The Gamecock Club operates under the direction of the Athletic Director, the President of the University and the Board of Trustees. The club has a full-time Executive Director who is charged with the responsibility of day-to-day operations.

The policies and boundaries of the Club's endeavors are bound by the rules of the NCAA, the University of South Carolina and any affiliated conferences. The working policies and rules of the club membership are set forth by a Board of Directors comprised of the 53 Chapter Presidents and an Executive Committee of 16 members from the 16 Judicial Districts of South Carolina, who are elected by the Chapter Presidents in those specific Districts.

Are joint memberships permitted?

Joint memberships are not permitted. Memberships will be recorded under one name and one social security number or a special number.

Will membership guarantee me tickets?

Tickets will be assigned on the basis of availability. If full season books are not available then season tickets will be offered for those games that are available.

What is continuous giving?

Membership priority is established through consecutive years of contribution without interruption.

What is season ticket priority?

This is exactly like continuous giving. Season tickets are automatically reassigned from year-to-year unless there is an interruption.

Will my ticket assignment be affected if I lower my contribution?

Yes, in almost all cases; however, there can be exceptions.

Can my tickets be passed on to someone in my family or to a friend?

At the present time the Gamecock Club does not have an inheritance policy. A long range planning committee made up of members of the Gamecock Club Board of Directors and Executive Committee is formulating a policy.

Does the Gamecock Club have a Matching Gift Program?

Yes, the Gamecock Club qualifies for many matching gift programs. If your employer offers a matching gift program, you will receive credit for the entire contribution. You should secure a matching gift form from your company, complete your portion and send it along with your contribution to the Gamecock Club. The matching gift form will not be processed until your portion is completely satisfied, not upon receipt of a partial payment. If the form states, **"gifts to Athletic Programs and Athletic Scholarships do not qualify," the Gamecock Club cannot submit the matching gift request.**

Your portion of the contribution is payable on or before August 1. The University Treasurer will verify that your contribution has been received and will then mail the application to your place of employment, which will in turn mail its gift to the Gamecock Club.

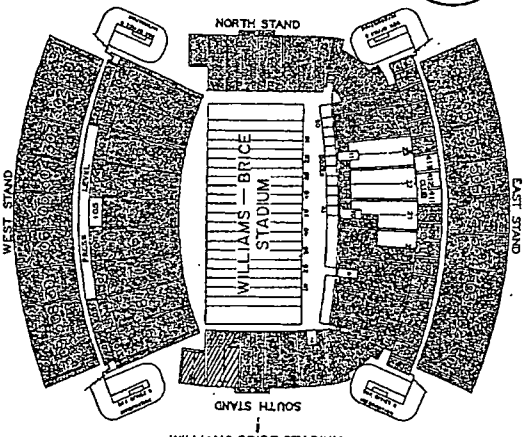


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OTHER BENEFITS

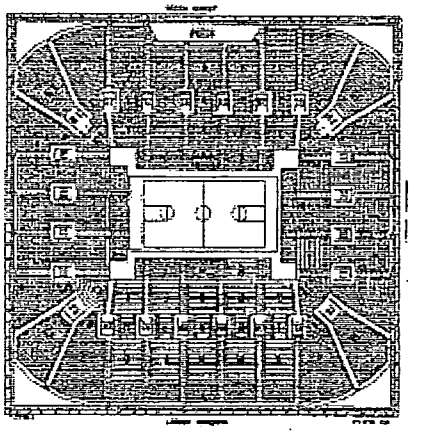
	ROOST	CENTURY	R/H	HALF	FULL	S.S.	LT. FULL	LT. S.S.
TAX DEDUCTION (See page 18)	X	X	X	X	X	X	X	X
MEMBERSHIP CARD	X	X	X	X	X	X	X	X
WINDOW DECAL	X	X	X	X	X	X	X	X
SPURS-N-FEATHERS		X	X	X	X	X	X	X
FOOTBALL-BASKETBALL MEDIA GUIDES		X	X	X	X	X	X	X
GAMECOCK LICENSE TAG*		X	X	X	X	X	X	X
DESK & POCKET CALENDAR		X	X	X	X	X	X	X
GAMECOCK CLUB DUTCH BUFFET**				X	X	X	X	X
PROGRAM LISTING				X	X	X	X	X
ELEVATOR PASS				X	X	X	X	X
RECOGNITION PLAQUE***					X	X	X	X

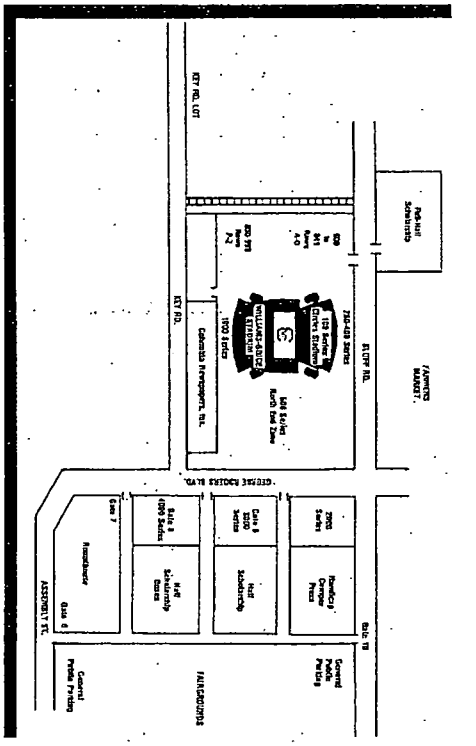
* Upon Request
** Guests are permitted based on reservations.
*** This is a new program. It will take five years to complete. A specified number of plaques will be forwarded each year by seniority of membership years.

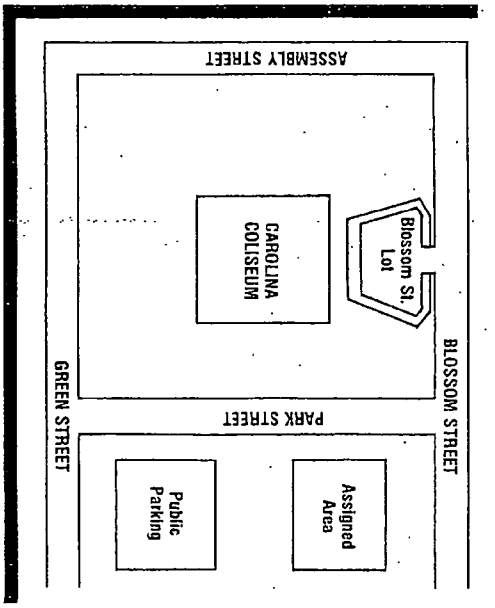


WILLIAMS-BRICE STADIUM

- Gamecock Club Members
- Faculty/Staff
- Students
- Visitors
- High School Coaches


CAROLINA COLISEUM





Parking is designed for Passenger Vehicles Only. Campers, Buses and Recreational Vehicles must park in a special area.

Handicapped Parking is limited. Parking will be assigned on a first come first serve basis.

Parking will only be assigned to those individuals that have ordered Season Football & Basketball Tickets.

0415



"Gamecocks"

University of South Carolina

COLUMBIA, SOUTH CAROLINA 29208

Dear Gamecock Club Supporter:

On behalf of the Athletic Department at the University of South Carolina, I would like to take this opportunity to thank you for your support and contributions to "Gamecock Athletics". Once again, we have exceeded the four million dollar mark. This can be attributed to the best fans in the country and the efforts of the Board of Directors and Executive Committee of the Gamecock Club. For this support and hard work, we are deeply appreciative.

Your contributions provide us an opportunity to develop a total athletic program and give our coaches and athletes an opportunity to be competitive at a national level.

Again, on behalf of the athletes that wear the Garnet and Black, we say THANK YOU for supporting the University of South Carolina and its athletic program.

Kindest regards.

Sincerely,

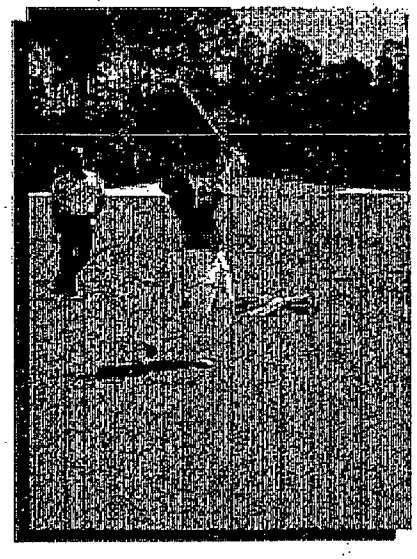
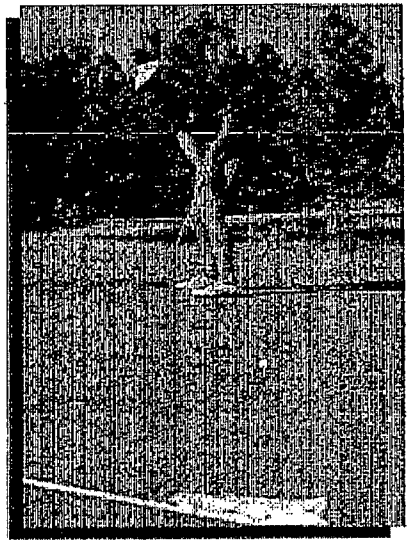
Bob Marcum
Director of Athletics

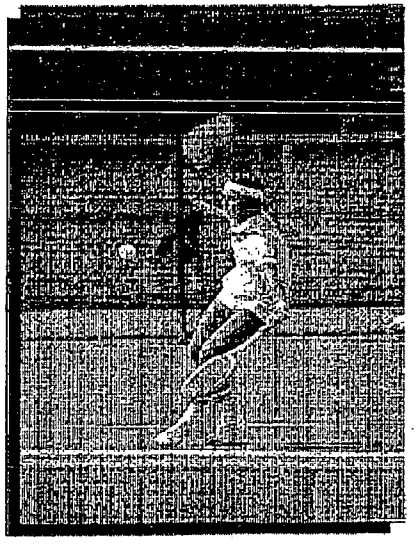
BM:ew

Athletic Department







000413

Resolution

October 20, 1986

Recent Internal Revenue Service interpretation requires that the University of South Carolina Gamecock Club establish a fair market value of memberships so as to establish a base for tax deductible donations.

Whereas the University of South Carolina Gamecock Club ticket policy does not reserve various sections of the Williams-Brice Stadium for the various levels of memberships, and

Whereas, ticket assignments are made on the best available locations, and

Whereas, reasonable comparable tickets for games remain available for general public, non-club member purchase, and

Whereas, the University of South Carolina Gamecock Club requires a minimum of a $100 donation to be eligible to purchase priority tickets prior to the sale of tickets to the general public (non-members),

Be it resolved that the University of South Carolina has established the fair market value of the benefits of membership in the University of South Carolina Gamecock Club at $100. *Therefore,* all donations above this level may be treated as charitable contributions and should be fully tax deductible under our current charter and current tax laws. This policy is substantially identical to situation #4 discussed in Internal Revenue Service Ruling 86-63 (186 IRB17,6).

This Resolution should not apply if you do not order season football and season basketball tickets.

000414

UNIVERSITY OF SOUTH CAROLINA
COLUMBIA, S.C. 29208

PRESIDENT

October 21, 1986

Dear Gamecock Club Members:

It is indeed a pleasure for me to thank you for your continued support of the Gamecock Club again this year. For the second year in a row you have exceeded the established contribution goal and for this outstanding achievement I take great pleasure in thanking you. This effort on your behalf clearly exemplifies what Carolina is all about.

The group of freshman that entered the University this past fall was the brightest ever. We are able to attract the highest caliber students through the positive exposure generated through our athletic programs and the outstanding men and women directly responsible for its continued success. You have played a major role in the overall success of the University of South Carolina, both athletically and academically.

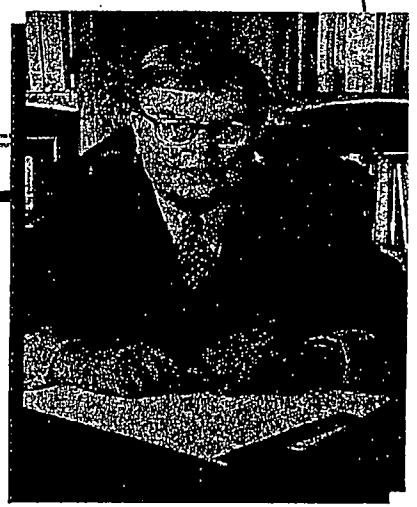
I look forward to your continued support and once again, thank you for contributing to the excellence that characterizes Carolina.

Sincerely,

James B. Holderman

JBH/tdt

The University of South Carolina: USC Aiken; USC Extended Carolina Campus, Conway; USC Lancaster; USC Spartanburg



Atlas Electric Co., Inc.

2516 OSCAR JOHNSON DR.
NORTH CHARLESTON, S.C. 29405
(803) 747-2714
FAX (803) 747-1786

August 1, 1991

USC Gamecock Club
Rosewood Dr.
Columbia, SC 29208
ATTN: Art Baker

RE: Lifetime Silver Spur

Dear Art:

We contracted to become a Lifetime Silver Spur Donor in February 1987. We have paid to date $28,000.00 on that agreement. On February 7, 1987 in my cover letter (copy attatched) I clarified our agreement with Chip Clary that in the event business conditions should change such that we were unable to meet the entire balance that as long as $25,000.00 had been paid we could change our classification to Lifetime Scholorship Donor. We hereby request this change. I would like the opportunity to complete the balance in the future and have this classification increased.

We have made an official name change of which documentation is attatched. Please make this change on all documents and records.

Look forward to a successful season.

Sincerely,

Gorden H. Timmons
President

DEFENDANT'S EXHIBIT
11-5-13

ELECTRICAL CONTRACTING • HEATING & AIR CONDITIONING

Timmons 000001

000415

Atlas Services, Inc.

P.O. BOX 60759
NORTH CHARLESTON, S.C. 29419-0759
(803) 747-2714
FAX (803) 747-1786

RECEIVED
JUN 10 1996
USC Gamecock Club

700000729
950-00-0045

June 7, 1996

The USC Gamecock Club
1300 Rosewood Drive
Columbia, SC 29208
Attn: Herb Sharpe

Dear Herb;

As per our conversation today, I am in the process of closing on the sale of Atlas Services, Inc. The business was formerly Atlas Electric Co.,Inc. I hereby request the ownership of the Lifetime donation be transferred to me personally. As you can see by the attached letter dated February 7, 1987 that was agreed on some 9 years ago. Please acknowledge in writing for my records that this change has been made.

Sincerely;

[redacted]
President

GHT:mmd

6/13/96
D

O.K.
Herb Sharpe

DEFENDANT'S LC EXHIBIT
Timmons
12-5-12

Timmons 000002

000416

UNIVERSITY OF SOUTH CAROLINA

June 24, 1996

RECEIVED JUN 2 5 1996

Ticket - SC FANS 800-472-3267 Curt Peacock

Mr. Gorden H. Timmons
3548 Oscar Johnson Drive
North Charleston, South Carolina 29405

Dear Mr. Timmons:

We are in receipt of your June 7, 1996 letter which advises that you are in the process of closing on the sale of Atlas Services, Inc. As you requested, the ownership of the Gamecock Club Lifetime Silver Spur membership was transferred to your name effective June 13, 1996.

Your Lifetime Silver Spur is now under the name of "Gorden H. Timmons, 3548 Oscar Johnson Drive, N. Charleston, SC 29405". The account number to reference on future correspondence is #700001729.

If you have any questions concerning your account, please feel free to contact our office at (803) 777-4276. Thank you for your continued support of the University of South Carolina and the Gamecock Club.

Sincerely,

Debbie W. Griffin
Office Manager

DEFENDANT'S EXHIBIT 6 TIMMONS 6 4-5-13

Gorden H. Timmons

247 Hill Branch Road

Ridgeville, SC 29472

March 25, 2012

Booster # 214106/USC ID # 272639

Patrick McFarland

USC Gamecock Club

1300 Rosewood Drive

Columbia. SC 29208

Dear Patrick,

I want to thank you for meeting with me on March 20, 2012 in regards to my new parking assignment. I appreciate the time you took with me to show me our options in regards to the VIP parking area. Our visual tour of the site from the stadium was impressive.

After reviewing the layout with my wife we have decided that we would like our 2 (two) parking spots to back up to the existing large trees in the VIP lot next to Bojangles. I have enclosed a copy of the layout. You had pointed out that I should get back with you in late May. The actual assignments will be made at that time.

I was also pleased to hear that you felt that the priority structure for the allocation of tickets to away games, bowl games and baseball post season for



Lifetime Donors had been resolved. As we know the assignment strictly based on points does not meet the obligations that were guaranteed when these lifetime contracts were purchased. I still believe that if every lifetime donor was given 1000 points added to their existing points that this would solve this problem forever. If the points are not given we would like a letter from your office that at least will guarantee that these priorities will be honored in the future.

Thanks again for your time and efforts in resolving these matters.

Sincerely,

Gorden H. Timmons

Gorden H. Timmons

247 Hill Branch Road

Ridgeville, SC 29472

USC Gamecock Club

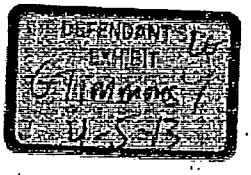
1300 Rosewood Drive

Columbia. SC 29208

January 10, 2011

Dear Mr. Patrick McFarland:

First, I would like to thank you and Mr. Wilson for meeting with my daughter, Amy Mahoney, and myself on December 21, 2010, to discuss the matter of my families' status in the Gamecock Club's hierarchy. To reiterate our concern ,In March, 1987, I signed a contract, of which you have a copy, with the head of the Gamecock Club, Chip Clary, that entitle my children and me to lifetime benefits which included parking privileges as well as second priority ticket allocation . This allocation was to be second only to Lifetime Silver Spur donors as outlined in the brochure, of which I had provided you a copy at our meeting, and also, a copy of the appropriate page from the brochure is attached. The reason for our meeting was to express our disagreement with the allocation of tickets that we have been receiving to playoff games as well as bowl games. As explained to us, your interpretation of second priority meant that our ticket allocation was to be



dispersed after all other donors' tickets had been dispersed. After reviewing the brochure, which was a solicitation by the Gamecock Club for our sizable donation, you clearly saw that as second priority, as defined in the solicitation, my tickets are to be allocated after the Life Time Silver Spur Donors received their allocation, regardless of points.

I feel that the issue of the discrepancy in the definition of second priority must be brought before the Gamecock Club Board of Directors at their January meeting. I will make myself available for the meeting if I can be of any assistance in resolving this matter. I feel that resolution is needed not only for my family and me, but for all Lifetime Donors who entered our contracts with lifetime and beyond privileges as outlined in the 1987 brochure. Because of you current point system our priorities have been negated. We must be considered outside the point system or compensated appropriately with bonus points to raise us to the appropriate point level to insure our status as per our contracts and as outlined in the solicitation of 1987.

To continue, we have enjoyed our current stadium-side parking place for around thirty years. When our current stadium-side parking is eliminated and allocation for our new space is assigned, we should receive our parking space allocation after Silver Spur Donors and not as part of your point system. This would comply with our privileges as promised in our contract,

Also, as a reminder, I would appreciate your attention to the allocation of my 2011 baseball tickets and parking. Without your help and knowledge of our conversations, who knows where my tickets will be. A Lifetime Scholarship Donor should not have to resort to contacting you to get their allocations as promised.

In closing, after leaving our meeting, my daughter and I felt that you have an understanding of our concerns that our status as well as all Lifetime Donors' status will be upheld as per contract regardless of your point system. Again, thank you for your time and consideration.

Sincerely,

Gorden H. Timmons

Cc: Jack Wilson

MCFARLAND, PATRICK

From: DAY, TONI
Sent: Monday, May 28, 2012 5:23 PM
To: MCFARLAND, PATRICK
Subject: Fwd: May 28 Meeting

I got the below email from Mr. Timmons...not sure why he sent it to me???

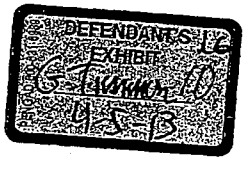
Begin forwarded message:

> **From:** Gorden Timmons <gordentimmons@bellsouth.net>
> **Date:** May 28, 2012 3:53:18 PM EDT
> **To:** "DAY, TONI" <KIRKLANT@mailbox.sc.edu>
> **Cc:** john Simmons <jsimmons@simmonslawfirm.com>, Jenny Horne <jenny@jennyhornelaw.com>
> **Subject: Re: May 28 Meeting**
>
> I met with Patrick today as scheduled. The meeting did not turn out as promised. It appears that we will not receive a real priority for parking selection as promised even though we have a legal binding contract with the University. Our space of over 25 years has been taken away. The spaces will be by points and by the time we are allowed to select the VIP spaces will be gone. My wife has a handicap placard however that really will not solve the problem. There are games where we can not attend and my daughters use my space. They would not be allowed to park in the handicap space. I urge the University to honor their legal obligation by giving me a priority selection time that will assure our location in the VIP area.
>
> ---
>
> **From:** "DAY, TONI" <KIRKLANT@mailbox.sc.edu>
> **To:** Gorden Timmons <gordentimmons@bellsouth.net>
> **Sent:** Wed, May 23, 2012 9:31:37 AM
> **Subject:** Re: May 28 Meeting
>
> Mr. Timmons,
> We are open on Memorial Day and Patrick will be in the office!
>
> Thanks!

DEFS - 000588

000424

1



CRANE, JEFF

Subject: FW: University of South Carolina Football Selection Process

Dear _____,

Your selection time for your 2012 Gamecock Football season tickets is just two days away!

Selection Date: **Tuesday, Jun 12th 9:00 AM**

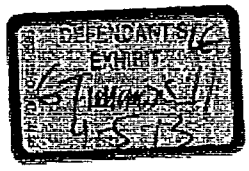
If you wish to maintain your seats from the 2011 season and you submitted payment by the May 31st deadline, then no action is required. You may opt out of these notification emails by clicking here.

All selections will utilize the same online seat selection tool as previous seasons. Please familiarize yourself with the tool prior to your selection time. Simply visit www.GamecocksOnline.com/tickets/ and click the link for the Football Seat and Parking Selection System. Use the login information printed on your ticket application to access your account.

If you have any questions, please call 803.777.4274 or 800.4SC.FANS (472.3267).

As a Lifetime Silver Spur or Lifetime Full Scholarship member, should you choose not to participate in the parking selection process in the new Farmer's Market parking venue, the Athletics Department will assign a reserved space for you in Quad 1. Please notify Caitlyn McAnulty in the Gamecock Club by phone (803)777.6279 or email (mcanultyc@mailbox.sc.edu) if you prefer this option within 24 hours of your selection time.;

Go Gamecocks!



DEFS - 000045

000425

0427

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS IN THE FIFTH JUDICIAL CIRCUIT
Gordon H. Timmons, Patricia A. Timmons, Amy M. Timmons now known as Amy M. Mahoney and Amanda E. Timmons, Plaintiffs, vs. The University of South Carolina and The University of South Carolina Gamecock Club, Defendants.	)	Civil Action No.: 2012-CP-40-3931 **PLAINTIFFS' ANSWERS TO DEFENDANTS' FIRST SET OF INTERROGATORIES**

TO: ROBERT E. STEPP, ESQUIRE AND BESS J. DURANT, ESQUIRE, ATTORNEYS FOR DEFENDANTS:

Plaintiffs hereby respond to Defendants First Set of Interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure.

INTERROGATORIES

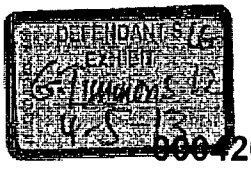
1. Provide the names and addresses of any witnesses who may have knowledge of the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

Gordon H. Timmons
[redacted]
Ridgeville, SC 29472

Mr. Timmons will testify regarding the allegations set forth in the Complaint.

Patricia A. Timmons



Ridgeville, SC 29472

Mrs. Timmons will testify regarding the allegations set forth in the Complaint.

Amanda Elizabeth Timmons
[redacted]
Ridgeville, SC 29472

Ms. Timmons will testify regarding the allegations set forth in the Complaint.

Amy Melissa Timmons Mahoney
[redacted]
Ridgeville, SC 29472

Ms. Mahoney will testify regarding the allegations set forth in the Complaint.

Chip Clary
formerly of The Gamecock Club
[redacted]
Columbia, SC 29206

Mr. Clary will testify regarding the contract entered into with Plaintiff.

J. Steven Beckham
Chief Executive to the President
University of South Carolina

Mr. Beckham will testify regarding the contract entered into with Plaintiff.

Patrick McFarland
The Gamecock Club
Rosewood Drive
Columbia, SC 29208

Mr. McFarland will testify regarding the conduct of Defendants relative to the Plaintiff's contract.

Robert D. Hendrix
[redacted]
Lexington, SC 29072

No written or recorded statements have been taken from any of the above witnesses.

2. For witness concerning the facts of the case, set forth either a summary sufficient to inform Defendants of the facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witness.

ANSWER:

See response to Interrogatory Number 1.

3. Provide a list of any photographs, plats, sketches, or other prepared documents that relate to any of the claims or defenses in this case.

ANSWER:

The documents which relate to Plaintiff's claims are attached as Exhibits to the Complaint in this action.

4. Provide a complete itemized statement of damages and describe in detail every item of damages for which you seek recovery in this lawsuit, and in what capacity, and describe how the amount of damages was calculated for each.

ANSWER:

In regards to the Defendants' breach of contract by their failing to provide the specifically designated lifetime parking location, Plaintiff seeks a return of the $28,000 paid, together with interest at the legal rate from January 1, 1990 to time of repayment, which as of this date is $140,054.14.

In regards to the Defendants' breach of contract by their charging a seat license in the sum of $1,880 per year from years 2009 until 2011 and increasing to $2,600 per year in 2012. This amount should be refunded, or alternatively, Plaintiff is entitled to damages in the amount of the seat licenses for the life expectancy of Amy Timmons Mahoney, born May 2, 1972 - which is approximately 47 years, for a total of $122,200.

In regards to Defendant's breach of contract by their failing to provide first priority tickets for away games and bowl games, Plaintiff has been damaged in the difference in ticket value between the first priority tickets Plaintiff should have received and the value of the inferior tickets provided over the life Amy Timmons Mahoney. For example:

Stub Hub Ticket Valuation of Inferior Seat = $100

Stub Hub Ticket Valuation of Priority Seat = $300

Differential per ticket @$200 x 4 = $800 per event

10 events per year x $800 = $8,000

$8,000 per year x 47 = $376,000.

Regarding the Timmons' on-grounds parking space within the shadows of Williams Brice stadium, there are no true comparable lots as all on-ground stadium parking has been taken. Therefore, the Timmons value this space being taken from them as having caused them $150,000 in damages for loss of their on-stadium parking. Mr. Timmons entered into this agreement with the University and Gamecock Club so that in his older years he and his wife Patricia could quickly and easily access their seats in the stadium without having to cross any streets or walk a long distance in their old age.

5. Identify every expert witness that you intend to use as a witness at the trial of this case and for each such expert witness, set forth the subject matter on which the witness is expected to testify, a complete statement of all opinions to be expressed and the basis and reasons for the opinions, the data or other information considered by the witness in forming the opinions, any exhibits to be used as a summary of or support for the witness' opinions, and the qualifications of the witness, including a list of all publications authored by the witness.

ANSWER:

Plaintiff hereby reserves the right to supplement these responses to name an expert witness.

6. Identify all correspondence and documents (as defined above) that relate in whole or in part to the allegations in your Complaint.

ANSWER:

In addition to the exhibits attached to the Complaint, Plaintiff produces the documents responsive to this request herewith.

THE MASON LAW FIRM, P.A.

BY: _____

MARK A. MASON
SALAH H. HIBRI
THE MASON LAW FIRM, P.A.
Tidewatch Centre on Shem Creek
465 West Coleman Boulevard, Suite 302
Mount Pleasant, South Carolina 29464
Telelphone: (843) 884-1444
Facsimile: (843) 884-3595
E-mail: mark@masonlawfirm.com
salah@masonlawfirm.com
Attorneys for the Plaintiffs

Mount Pleasant, South Carolina
February 6, 2013

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the pleading or paper to which this certificate is affixed was served upon the party(ies) to this action by hand, or by depositing a copy of the same in the U.S. Mail, first class postage pre-paid and addressed to the proper attorney(s) of record for such other party(ies) on this, the 6th day of February, 2013, in Mount Pleasant, South Carolina.

THE MASON LAW FIRM, P.A.

BY: _____

EXHIBIT B

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT made this 17 day of Feb, 1987, by and between Atlas Electric Company, c/o Gordon H. Timmons, hereinafter referred to as the "Donor" and the University of South Carolina Gamecock Club, hereinafter referred to as the "Gamecock Club".

WITNESSETH:

FOR AND IN CONSIDERATION of the mutual covenants contained herein, the parties do hereby agree as follows:

1. Donor has contributed Ten Thousand and No/100 Dollars ($10,000) to the Gamecock Club .

2. Donor has agreed to contribute the additional sum of Thirty Thousand and No/100 Dollars ($30,000) payable in annual installments of Six Thousand and No/100 Dollars ($6,000) beginning in 1988 and ending in 1992 for the privilege of being a Lifetime Silver Spur Member of the Gamecock Club with all benefits appertaining thereto.

3. The Gamecock Club hereby acknowledges receipt of Ten Thousand and No/100 Dollars ($10,000) and agrees that in exchange of the receipt of Ten Thousand and No/100 Dollars ($10,000) and the pledge for the additional Thirty Thousand and No/100 Dollars ($30,000), Donor will be designated as a Lifetime Silver Spur Donor with all the privileges and benefits pertaining thereto as set forth in the attached Exhibit A, attached hereto and made part hereof and the terms of which are incorporated herein by reference. In accordance with said attachment, Donor will have the opportunity to purchase eight (8) football tickets and four (4) basketball tickets

4. The Gamecock Club agrees that the privilege and benefits of this membership will be transferred to Donor's daughters, Amanda Elizabeth Timmons (4 football tickets and 4 basketball tickets), for her lifetime only, and Amy Elizabeth Timmons (4 football tickets and 4 basketball tickets), for her lifetime only, upon death of Donor.

5. The funds contributed by Donor under the terms of this Agreement shall be deposited in a University permanent endowment account of which only the income derived therefrom may be spent as determined by the Gamecock Club.

IN WITNESS WHEREOF Donor has caused these presents to be duly authorized and the University of South Carolina Gamecock Club has hereunto set its hand and seal on the date first above written.

DONOR

By: [signature] (L.S.)

Date: Feb 17, 1987

THE UNIVERSITY OF SOUTH CAROLINA

By: [signature] (L.S.)
J. Steven Beckham
Chief Executive Assistant
to the President

Date: 2/26/87

THE UNIVERSITY OF SOUTH CAROLINA
GAMECOCK CLUB

By: [signature] (L.S.)
Chip Clary
Director, Gamecock Club

Date: Feb 23 1987

EXHIBIT A

LIFETIME SILVER SPUR

$40,000 or more (may be pro-rated over a 5 year period).

-Four season football tickets (best available).

-Additional four season football tickets (total of 8).

-Assigned reserved parking.

-First priority on away and bowl game tickets.

-Tickets may be assigned to one designated heir.

-Four season basketball tickets (best available).

-Assigned reserved parking at Coliseum (if available).

-First priority on away and tournament game tickets.

-First priority on any tickets involving any other South Carolina athletic event.

EXHIBIT C

EXHIBIT A

LIFETIME FULL SCHOLARSHIP

--Four Season Football Tickets (Best Available)
--Additional Four Season Football Tickets (Total of 8)
--Assigned Reserved Parking
--Second Priority on Away and Bowl Game Tickets
--Tickets May Be Assigned to One Designated Heir
--Four Season Basketball Tickets (Best Available)
--Assigned Parking at Coliseum (If Available)
--Second Priority on Away and Tournament Game Tickets
--Second Priority on any Tickets Involving any other South Carolina Athletic Events

EXHIBIT D

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	IN THE FIFTH JUDICIAL CIRCUIT
Gorden H. Timmons, Patricia A. Timmons, Amy M. Timmons now known as Amy M. Mahoney and Amanda E. Timmons,	)	Civil Action No. 2012-CP-40-3931
Plaintiffs,	)	
vs.	)	**AFFIDAVIT OF LANCE GRANTHAM**
The University of South Carolina and The University of South Carolina Gamecock Club,	)	
Defendants.	)	

2013 MAY 23 PM 1:59
C.C.P. & G.S.

Personally appeared before me Lance Grantham, who, first being duly sworn, deposes and says as follows:

1. I am Lance Grantham. This affidavit is based upon my personal knowledge and a review of institutional documents.

2. I graduated from the University of South Carolina ("USC") in 2001 with a Bachelor of Science degree in Sports Management. Since graduating from USC, I have been employed in management for ticket or guest services at both the college and professional sport level. In 2008, I became the Director of Ticket Operations for USC. Beginning in March 2012, I became the Assistant Athletic Director for Tickets Operations for the USC. Since I joined USC, I have been heavily involved in the away and bowl game ticket assignments to Gamecock Club members.

3. As the Assistant Athletic Director for Tickets Operations, I am familiar the assignment of tickets for away and bowl games for USC athletic events to Gamecock

Club members, including Lifetime Silver Spur members and Lifetime Full Scholarship members (collectively, "Lifetime Members"). Additionally, I am familiar with the Yearly Equitable Seating program ("YES") that assigns a seat donation to every season ticket in Williams-Brice Stadium.

4. I am familiar with Plaintiffs' claims regarding the assignment of tickets for away and bowl games and the implementation of the YES program.

5. Regarding the assignment of tickets for away and bowl games, in the Southeastern Conference ("SEC"), home teams assign seats in their stadiums to visiting teams. Similarly, in bowl games, the bowl's local organizing committee determines the ticket allotment locations for both participating teams.

6. I attend yearly meetings with other SEC ticket directors to discuss the location and assignment of tickets to visiting teams. Additionally, I have conducted an on-site inspection of every stadium in the SEC, with the exception of the recently admitted University of Missouri and Texas A&M University.

7. Beginning in the early 2000s, the quality of seats assigned to USC by other teams and by bowl sponsors began to decline. To get better seats than those available to the Gamecock Club, Gamecock Club members and other USC fans will often resort to other avenues to purchase tickets for away or bowl games. For example, fans will use Stubhub.com or purchase tickets from the opposing team's fans to acquire seats that are better than the ones available to the Gamecock Club.

8. Lifetime Members are at the top of the Gamecock Club priority for ticket assignment for away and bowl games. Once the home team or the bowl sponsor assigns tickets to USC, the best seats are assigned to Lifetime Members who timely requested the

tickets, and then the remaining tickets are available to the other Gamecock Club members.

9. As a Lifetime Member, Plaintiff Gorden Timmons receives a higher priority than any other non-Lifetime, Gamecock Club member with respect to the assignment of tickets for away and bowl games.

10. Regarding the implementation of the YES program, on or about September of 2008, the Gamecock Club mailed a brochure entitled "Yearly Equitable Seating" to every Gamecock Club member notifying him or her of the YES program. A copy of the brochure is attached hereto as **Exhibit A.**

11. On or about February 15, 2009, the USC Athletics Ticket Office invoiced Plaintiff Gorden Timmons for the seat donations associated with his season tickets under the YES program. A copy of the invoice is attached hereto as **Exhibit B.**

12. On or about May 18, 2009, the USC Athletics Ticket Office received payment from Plaintiff Gorden Timmons for the seat donations under the YES program. (*See* Ex. B.)

13. Plaintiff Gorden Timmons has never paid the seat donations under protest.

FURTHER AFFIANT SAYETH NOT.

Lance Grantham

Sworn to before me this 22nd day of May, 2013

Notary Public for Richland Co., SC
My commission expires: 10/4/2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	IN THE FIFTH JUDICIAL CIRCUIT
Gorden H. Timmons, Patricia A. Timmons, Amy M. Timmons now known as Amy M. Mahoney and Amanda E. Timmons,	)	Civil Action No: 2012-CP-40-3931
Plaintiffs,	)	CERTIFICATE OF SERVICE
vs.	)	
The University of South Carolina and The University of South Carolina Gamecock Club,	)	
Defendants.	)	

FILED IN RICHLAND COUNTY
C.C.P. & G.S.
2013 MAY 23 PM 1:59

I, the undersigned legal assistant of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for Defendants do hereby certify that I have served all counsel in this action with a copy of the document specified below by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

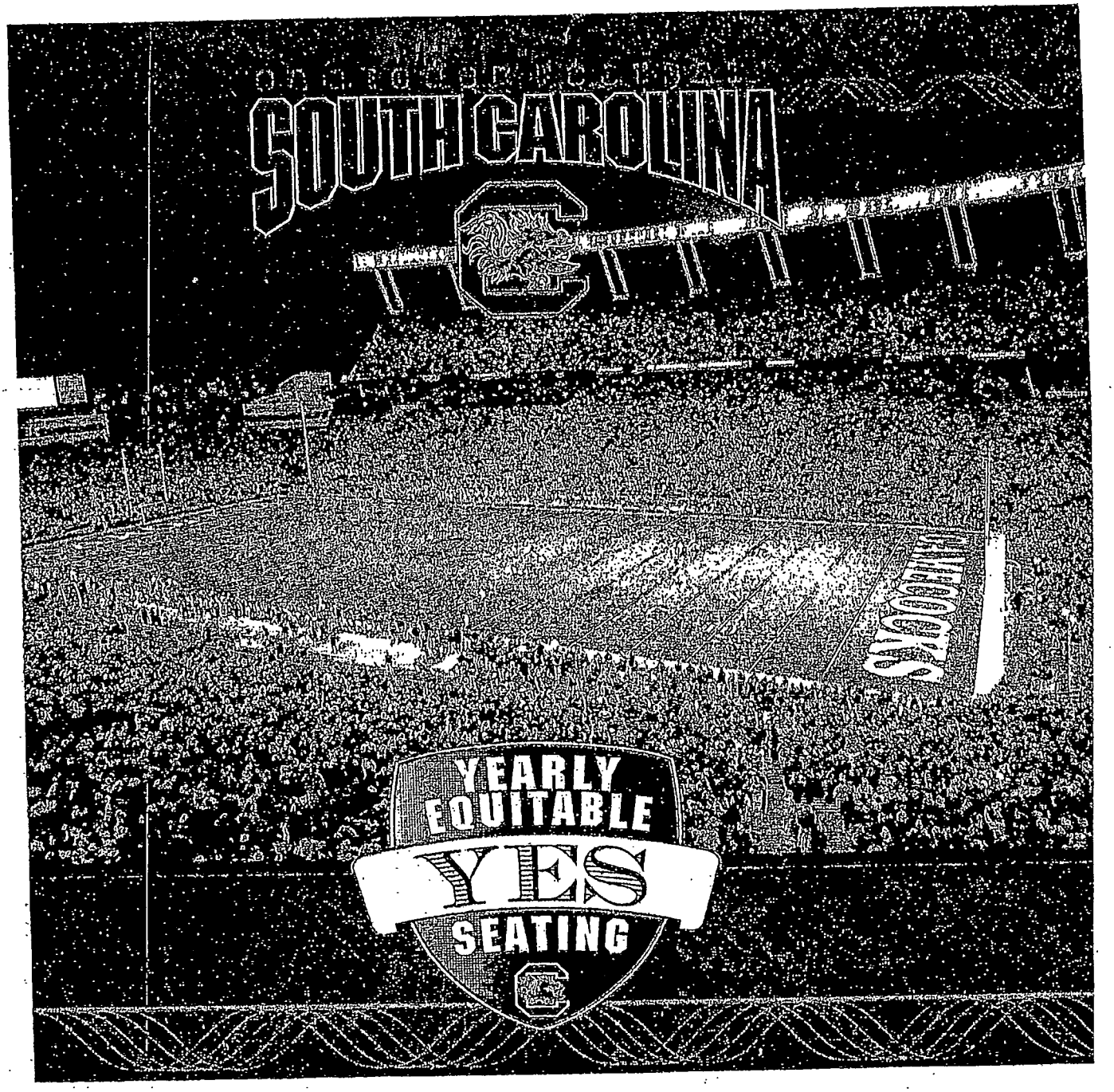
Document: Affidavit of Lance Grantham

Counsel Served: Mark A. Mason, Esquire
Salah H. Hibri, Esquire
The Mason Law Firm, P.A.
Tidewatch Centre on Shem Creek
465 West Coleman Boulevard, Suite 302
Mount Pleasant, South Carolina 29464
Attorneys for Plaintiffs

Valerie N. Hampton

May 23, 2013
Columbia, South Carolina

EXHIBIT A



0445

000443

Dear Gamecock Club Member:

Together, we have recently embarked upon The Garnet Way, the greatest undertaking in the history of South Carolina Athletics. The Garnet Way is a reflection of the pride and spirit we all have as Gamecocks and the road we will take to propel ourselves to consistently battle for championships.

As part of The Garnet Way, we have identified the projects over the next five years that we must undertake in order to level the playing field with our competitors in the SEC and elsewhere. We have done the research; we have identified the key facilities we must tackle in order to win; we have developed a plan to address our needs; and we have organized a team that bleeds garnet to implement the plan to help lead us to victory.

One key piece of The Garnet Way is a seat donation program for football called the Yearly Equitable Seating Donation, or "YES" Donation. Today, we are proud to share with you the details of YES and are excited about implementing YES in Williams-Brice Stadium together.

In developing YES, we first created and enacted a set of very important principles called the Fair Implementation Policy, which allows all fans to equitably participate in the success of The Garnet Way and Gamecock Football.

Yearly Equitable Seating has already been adopted in some form by nearly every other university in the SEC and by our in-state rival. We believe that our program is among the fairest in the country and truly gives every Gamecock fan a stake in the success of The Garnet Way. Of course, YES is also a key part of the plan that will put our Gamecocks in position to battle for championships.

We hope that you join us in embracing YES. We know that Gamecock Nation shares our commitment to providing our student-athletes with the resources they need to compete for championships year after year with the best in the country. It makes us proud and excited when we think of what YES will mean to the competitive future of Gamecock Athletics.

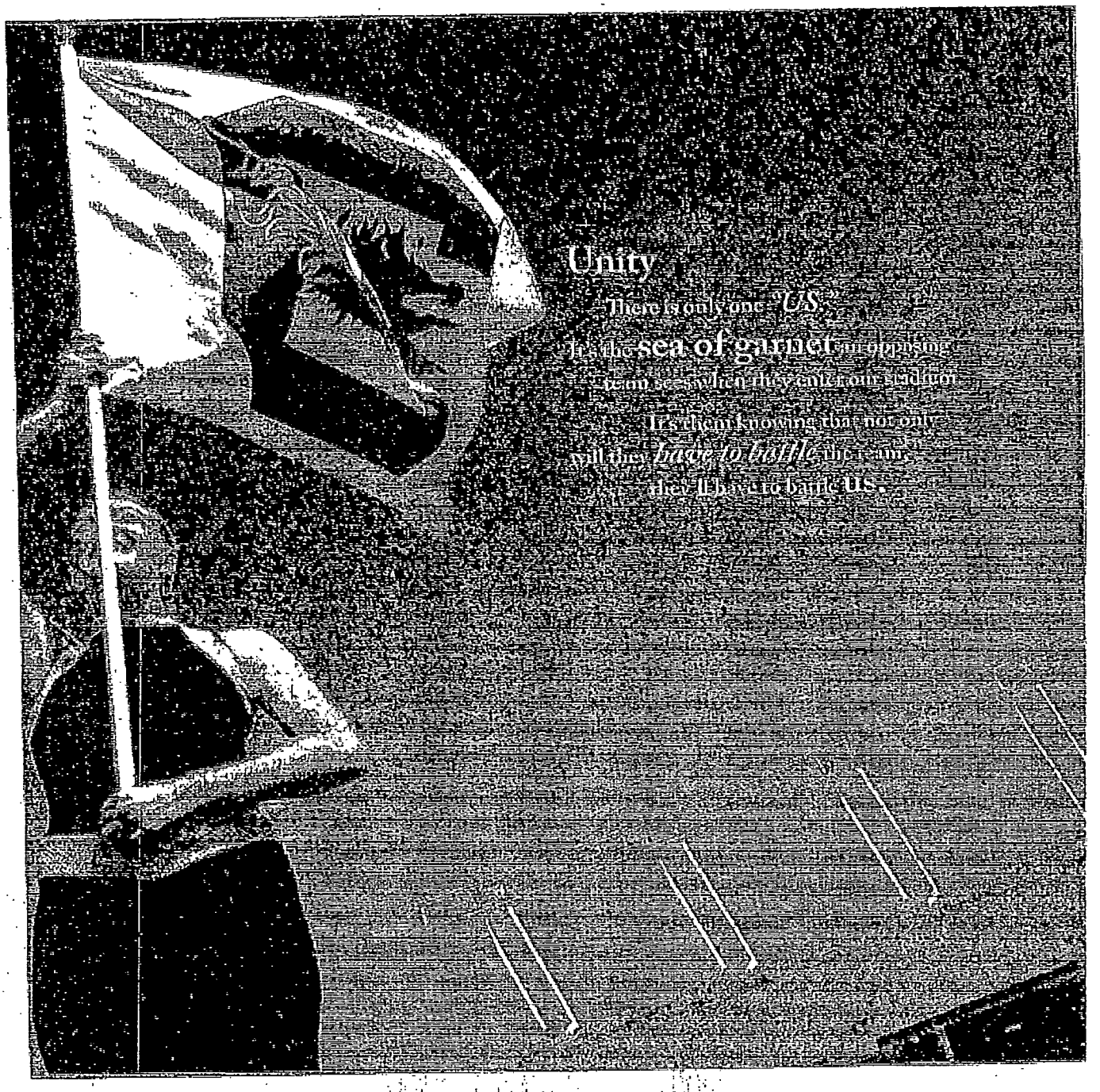
Our Blood Runneth Garnet,



Eric Hyman
Director of Athletics



Steve Spurrier
Head Football Coach


Unity
There is only one "US."
It's the sea of gurney orderlies
you see when they enter our stadium.
It's them knowing that not only
will they brace to battle the enemy,
they'll have to battle us.

000445

GAMECOCK CLUB MEMBERSHIP

For purposes of the YES donation and seating at Williams-Brice Stadium for the 2009 football season, status in the Gamecock Club is being calculated by 2008 membership level.

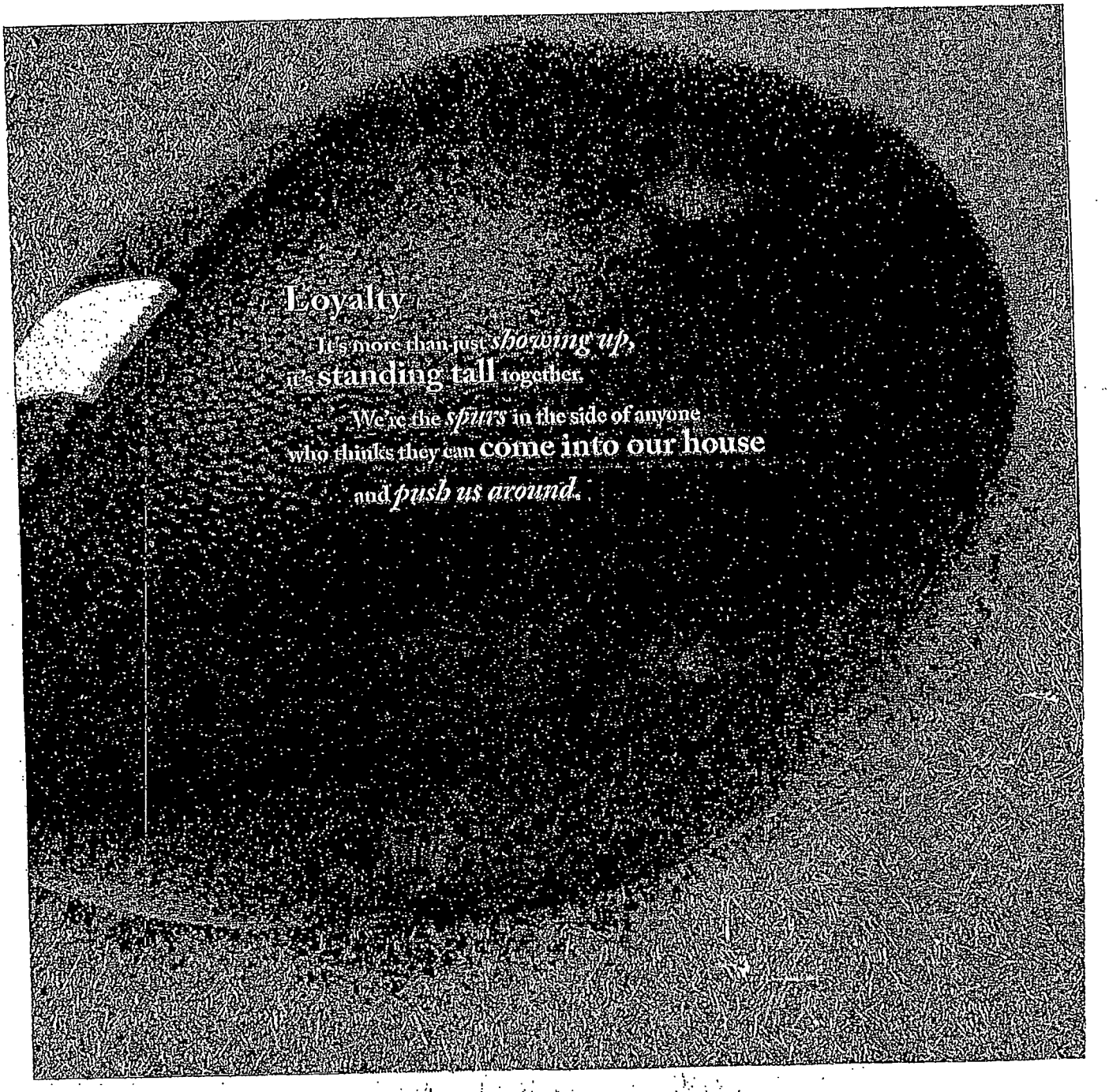
To retain current/new seats in Williams-Brice Stadium, all Gamecock Club members must at least maintain their 2008 membership level.

PRIORITY POINTS AND MEMBERSHIP LEVELS

Membership level and number of priority points within each level determines the order of seat selection for all Gamecock Athletics venues. In July 2008, each Gamecock Club member received notice of their current giving level and number of priority points with an opportunity to review and dispute their current status. The membership level and number of points reflected in your Letter of Intent are the measurements used to determine seat selection.

YES DONATION IMPORTANT DATES

OCTOBER 31, 2008:	Letters of Intent due to YES office
DECEMBER 2008:	Appointment letters mailed
DECEMBER 31, 2008:	Gamecock Club gift deadline
JANUARY 2009:	Donor seat selection appointments begin (in person, online or by phone)
MAY 2009:	Appointments end
MAY 15, 2008:	All seat donations and ticket payments due to ticket office
AUGUST 2009:	2009 football season tickets mailed


Loyalty
It's more than just showing up,
it's standing tall together.
We're the spurs in the side of anyone
who thinks they can come into our house
and push us around.

000447

MINI-PACKAGE TICKET HOLDERS

Donors who purchased four, five, or six game packages in 2008 will have the opportunity to renew (or upgrade, based on availability) these packages for the 2009 season. The YES donation for six game packages was determined by taking half of the full season donation amount for the area in which the mini-package seat is located. See examples in *YES Donation Examples* section beginning on page 14. The number of tickets you receive in your mini-package may increase or decrease on an annual basis due to ticket availability.

FUTURE PREMIUM SEATING

As the upgrading of Williams-Brice Stadium continues over the coming years, the Athletics Department has identified several areas of the stadium for potential expansion or enhancement of club seats and suites. The areas identified thus far include:

West Side 100 level (Sections 101-109)

West Side 600 level (Sections 601-606)

East Side 400 level (Sections 402-418)

CURRENT PREMIUM SEATING DONATION LEVELS 2009-2012

The Zone $850

600 level $1,100

200 level (203-206) $1,250

Champions Club (208-209)(201-202) $1,500

Donation levels for premium seating areas will be re-evaluated following the 2012 football season.

FOOTBALL TICKET PRIORITY

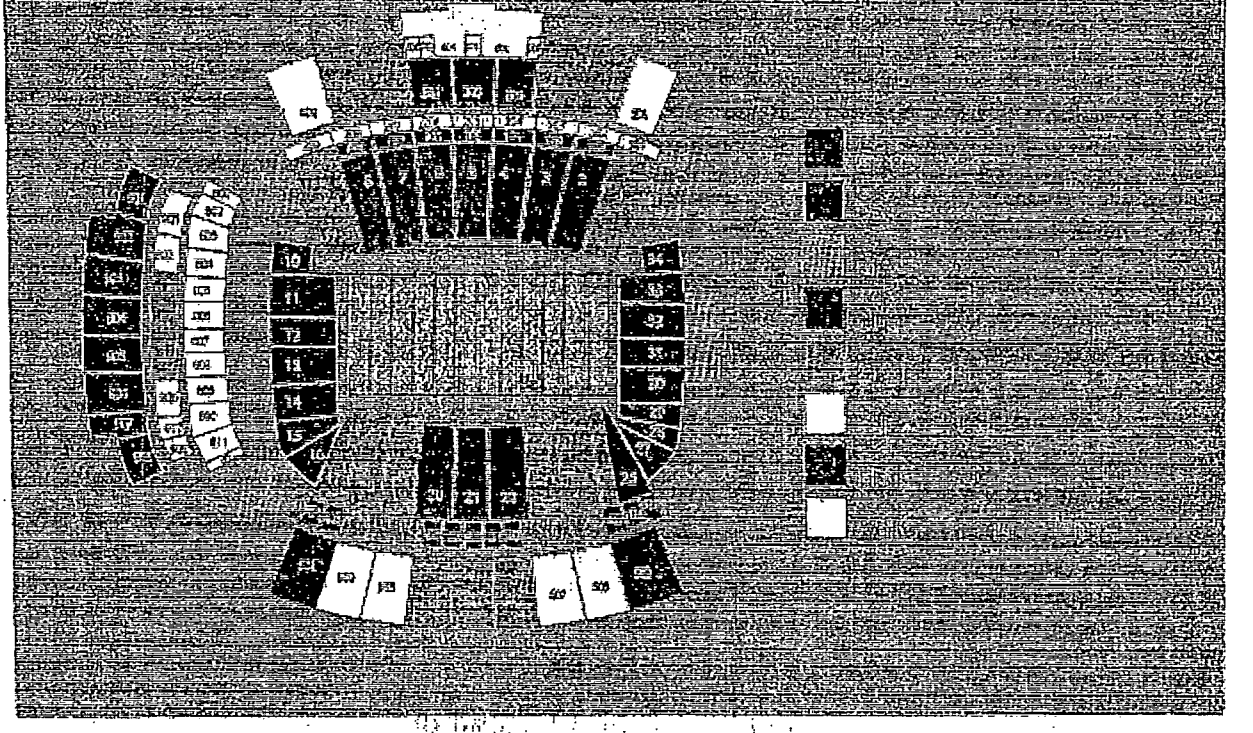
LEVEL	FIRST PRIORITY	SECOND PRIORITY	AWAY GAME PRIORITY	2008 DONORS BY GIVING LEVEL*	2008 FOOTBALL SEASON TICKETS ORDERED BY GIVING LEVEL
LIFETIME MEMBER	4	4	4	235	1,995
DIAMOND SPUR	8	2	8	16	128
PLATINUM SPUR	6	2	6	35	250
GOLDEN SPUR	6	2	6	153	1,096
GARNET SPUR	4	4	4	90	612
SILVER SPUR	4	4	4	1,621	10,219
FULL SCHOLARSHIP	4	4	2	2,003	15,442
HALF SCHOLARSHIP	4	2	2	2,562	10,346
ROUNDHOUSE	4	N/A	2	1,776	5,539
CENTURY	2	N/A	2	1,490	3,635

*This number reflects the total number of Gamecock Club members who purchased season tickets in 2008.

FIVE STEPS TO YES

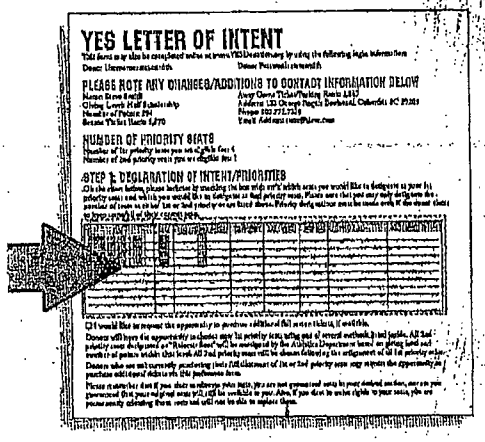
The Yearly Equitable Seat donation, or "YES donation", is a fair and simple concept, but being fair isn't always easy. If it seems complicated, it is only because being fair means that each Gamecock Club member must be given the same opportunity to take full advantage of their Gamecock Club priority membership level and seating status. That means everyone must follow the same steps before they can purchase seats to support our Gamecocks in 2009.

On the pages that follow, we have outlined the five steps to YES. As you read through the five steps, be sure to refer to your Letter of Intent Form so you can see how each step in the brochure relates to the same step on the response form. We have included examples, illustrations, and frequently asked questions to help show you how to complete Steps 1–5. If you are uncomfortable completing one of the five steps for any reason, please call the YES office at 803–777–SEAT (7328) and we will gladly assist you.



000449

YES LETTER OF INTENT


YES LETTER OF INTENT

PLEASE NOTE ANY CHANGES/ADDITIONS TO CONTACT INFORMATION BELOW

NUMBER OF PRIORITY SEATS

STEP 1: DECLARATION OF INTENT/PRIORITIES

This YES Letter of Intent may be filled out online at www.Yesdonation.org.

- All Gamecock Club members are guaranteed the right to keep their current seats.
- All Gamecock Club members must indicate which of their seats are 1st priority and which are 2nd priority. Priority designations must be made even if the donor elects to keep some/all of their current seats.
- Gamecock Club members will have the following opportunities in regard to their current seats at Williams-Brice Stadium:

☐ Keep selected seats at the newly established donation levels

☐ Relocate selected seats at the newly established donation levels

☐ Waive rights to selected seats with no opportunity to relocate those seats

Note:

- *Once donors elect to relocate some/all seats with intent to move to a higher or lower level, that donor is NOT guaranteed that tickets will be available in their desired donation level. However, every effort will be made to fulfill requests.*
- *Donors may only designate as either 1st or 2nd priority the number of seats listed under the "Number of Priority Seats" section of the Letter of Intent.*
- *Decisions regarding current seats indicated on the Letter of Intent are final.*

STEP 1

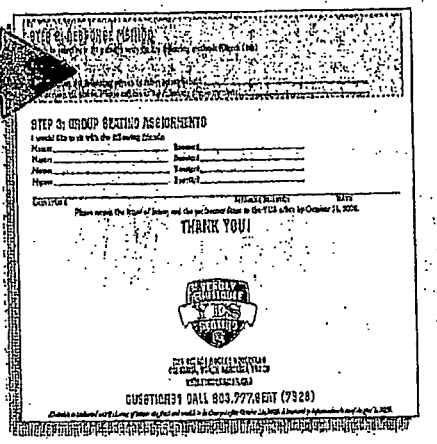
Step 1 is located on the front of your YES Letter of Intent Form.

Your personal "seat priority chart" is located on the front of your seat preference form under "Step 1." Please verify that your current seats are accurate.

STEP 2

Step 2 is on the top of the back of your YES Letter of Intent.

RESPONSE METHOD



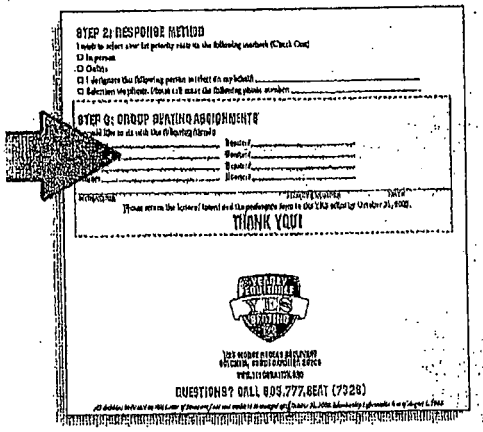
All current seat holders requesting to relocate their 1st priority seats to a higher or lower level will have the opportunity to choose new seat locations. Seats may be relocated by one of the following methods:

- ☐ In person
- ☐ Online
- ☐ Designate someone to choose on your behalf
- ☐ Phone

Note:

- *The YES office is committed to helping each and every Gamecock Club member individually, regardless of membership level.*
- *All members will be contacted in December with information on how to complete the seating process.*
- *This information is to assist the YES staff with planning for seat selections. Gamecock Club members will be able to change their selection methods if necessary.*

GROUP SEATING OPPORTUNITIES


STEP 2: RESPONSE METHOD

STEP 3: GROUP SEATING ASSIGNMENTS

THANK YOU!

QUESTIONS? CALL 805.777.SEAT (7328)

- Donors who wish to be seated with a friend or group of friends may designate this on the Letter of Intent.
- The following procedure will be used to seat donors in groups:

1. On the Letter of Intent, the donor must elect to relocate the same number of seats they wish to be relocated with a friend (Ex: Donor A wants two seats with a friend. He must first elect to relocate two of his current seats).
2. Return Letter of Intent attached to your friend's Letter of Intent.
3. Donors will select seats based on the membership level and priority point total of the friend at the lowest membership level and lowest amount of points (Ex: Friend A is a Full Scholarship member and Friend B is a Century Club member. Both donors will select seats at the Century Club member's scheduled time).

Note:

- *Donors who wish to sit in a group are unable to use the online Letter of Intent. All group members' hardcopy Letters of Intent must be turned in attached together. Group members will be assigned one appointment time to select new seats.*

STEP 3

Step 3 is on the middle of the back of your YES Letter of Intent.

STEP 4

SEAT SELECTION PRIORITY

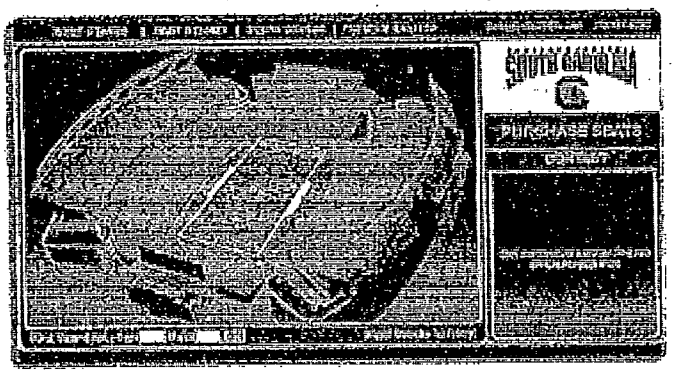
- All Gamecock Club members will have the opportunity to personally select their 1st priority seats using one of the methods in Step 2.
- The order in which new 1st priority seat locations will be chosen is as follows:

1. Lifetime Member
2. Diamond Spur
3. Platinum Spur
4. Golden Spur
5. Garnet Spur
6. Silver Spur
7. Full Scholarship
8. Half Scholarship
9. Roundhouse
10. Century

- Current mini-package ticket holders will select following the selection of all full season ticket holders and based on the same order of membership levels as above. If full season books are available, mini-package holders will be contacted by phone.

SEAT SELECTION

- Donors choosing to relocate their current 1st priority seats to a higher or lower YES donation area will have the opportunity to consult one-on-one with a YES representative. The actual seat selections will be made during individual seat selection appointments that will be scheduled starting in January 2009.
- Prior to their seat selection appointments, all donors are encouraged to contact the YES office with any questions. All donors will also have access to a new, state-of-the-art online seat selection system where they can choose their seats themselves. Donors are encouraged to utilize the seat selection system to view a YES donation area map of Williams-Brice Stadium that will provide up-to-the-minute updates on seats available. Each donor's personal login information is included on his or her Letter of Intent.
- All donors who wish to relocate their current 1st priority seats will be notified by mail with their seat selection times. Seat selection appointments will begin in January 2009 and will end in May 2009.
- Donors who elect to relocate their 2nd priority seats will be mailed a preference form in December. On this preference form, donors will be able to provide detailed information regarding their preferred areas for their 2nd priority seats. 2nd priority seats will be assigned by YES staff according to the preferences indicated. All 2nd priority seats will be assigned by Gamecock Club membership level and following the selection of all first priority seats.

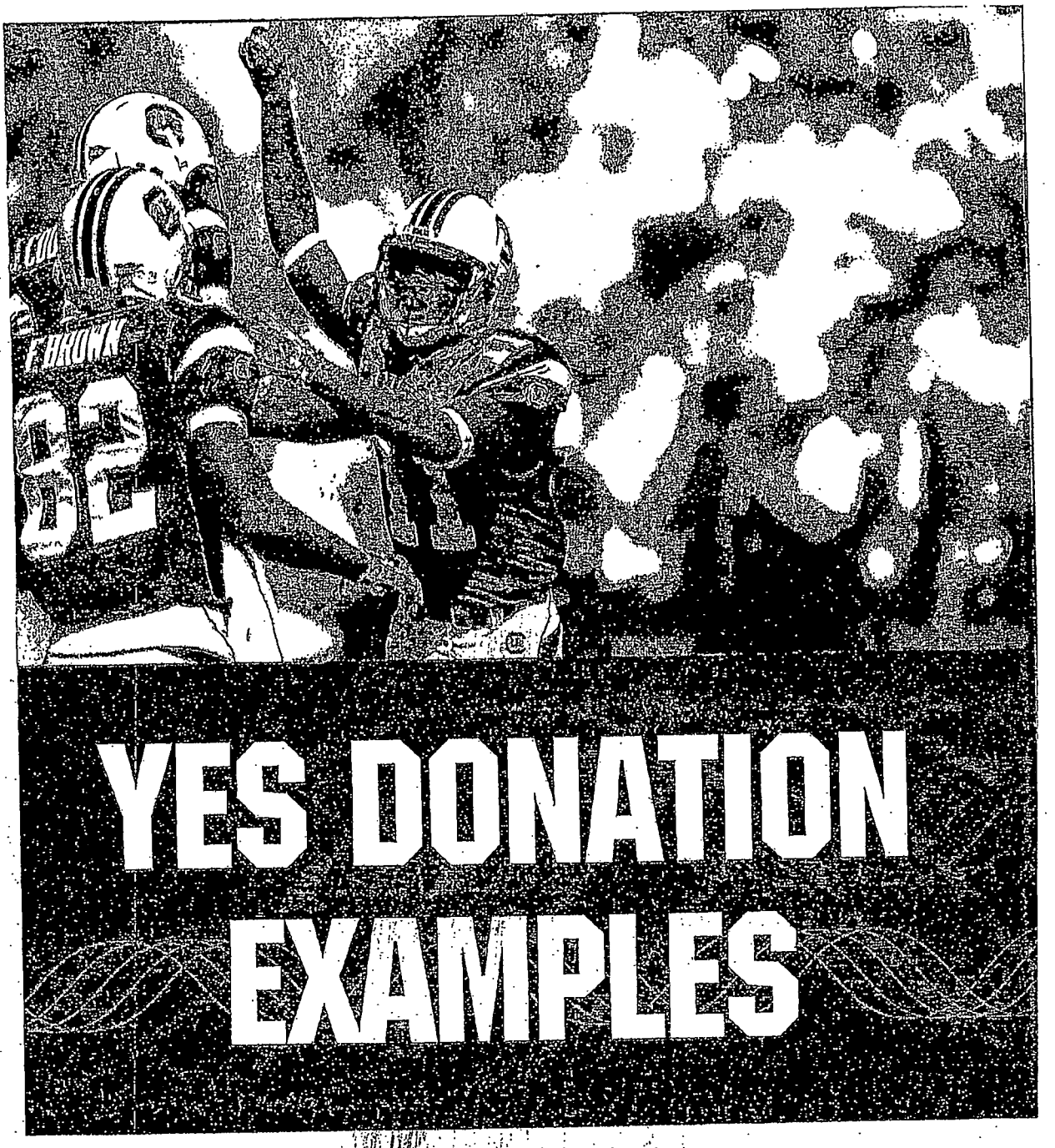


STEP 5

All donors will receive information on how to complete Step 5 in December 2008.

000454

0456



000455

EXAMPLE 1

Steve has purchased four season tickets in Section 303 (Green).
Season tickets (Green Section): $320 per seat x 4 = $1,280
Green Section YES donation: $145 per seat x 4 = $580
Steve's total amount due for the 2009 season: $1,860

YES LETTER OF INTENT

This form may also be completed online at www.YESDonation.org by using the following login information:

Donor Username: stevesmith Donor Password: stevesmith

PLEASE NOTE ANY CHANGES/ADDITIONS TO CONTACT INFORMATION BELOW

Name: Steve Smith
Owing Leech Half Scholarship
Number of Points: 294
Season Ticket Rank: 5,170
Away Game Ticket/Parking Rank: 2,869
Address: 123 George Rogers Boulevard, Columbia SC 29208
Phone: 803.777.7328
Email Address: steve@steve.com

NUMBER OF PRIORITY SEATS

Number of 1st priority seats you are eligible for: 4
Number of 2nd priority seats you are eligible for: 2

STEP 1: DECLARATION OF INTENT/PRIORITIES

On the chart below, please indicate by marking the box with an 'x' which seats you would like to designate as your 1st priority seats and which you would like to designate as 2nd priority seats. Please note that you may only designate the number of seats as either 1st or 2nd priority as are listed above. Priority designations must be made even if the donor elects to keep some/all of their current seats.

SECTION/ROW/SEAT	PRIORITY	SEAT PRICE	1ST PRIORITY	2ND PRIORITY	CURRENT	DO NOT RENEW
SECTION 303 ROW 4 SEAT 1	294	$145				
SECTION 303 ROW 4 SEAT 2	294	$145				
SECTION 303 ROW 4 SEAT 3	294	$145				
SECTION 303 ROW 4 SEAT 4	294	$145				

☐ I would like to request the opportunity to purchase additional full season tickets, if available.

Donors will have the opportunity to choose new 1st priority seats using one of several methods listed below. Your priority seats designated as "Relocate Seat" will be reassigned by the Athletics Department based on your number of points within that level. All 2nd priority seats will be chosen following the assignments of 1st priority seats.

Donors who are not currently purchasing their full allotment of 1st or 2nd priority seats may request to purchase additional tickets via this preference form.

Please remember that if you elect to relocate your seats, you are not guaranteed seats in your desired section. We guaranteed that your original seats will still be available to you. Also, if you elect to waive rights to your priority seats permanently relocate those seats and will not be able to replace them.

STEP 2: RESPONSE METHOD

I wish to select new 1st priority seats via the following method: (Check One)

☐ In person
☐ Online
☐ I designate the following person to select on my behalf: _____
☐ Selection via phone. Please call me at the following phone number: _____

STEP 3: GROUP SEATING ASSIGNMENTS

I would like to sit with the following friends:

Name: _____ Locator#: _____
Name: _____ Locator#: _____
Name: _____ Locator#: _____
Name: _____ Locator#: _____

SIGNATURE MEMBER NUMBER DATE

Please return this letter of intent and the preference form to the YES office by October 31, 2008.

THANK YOU!

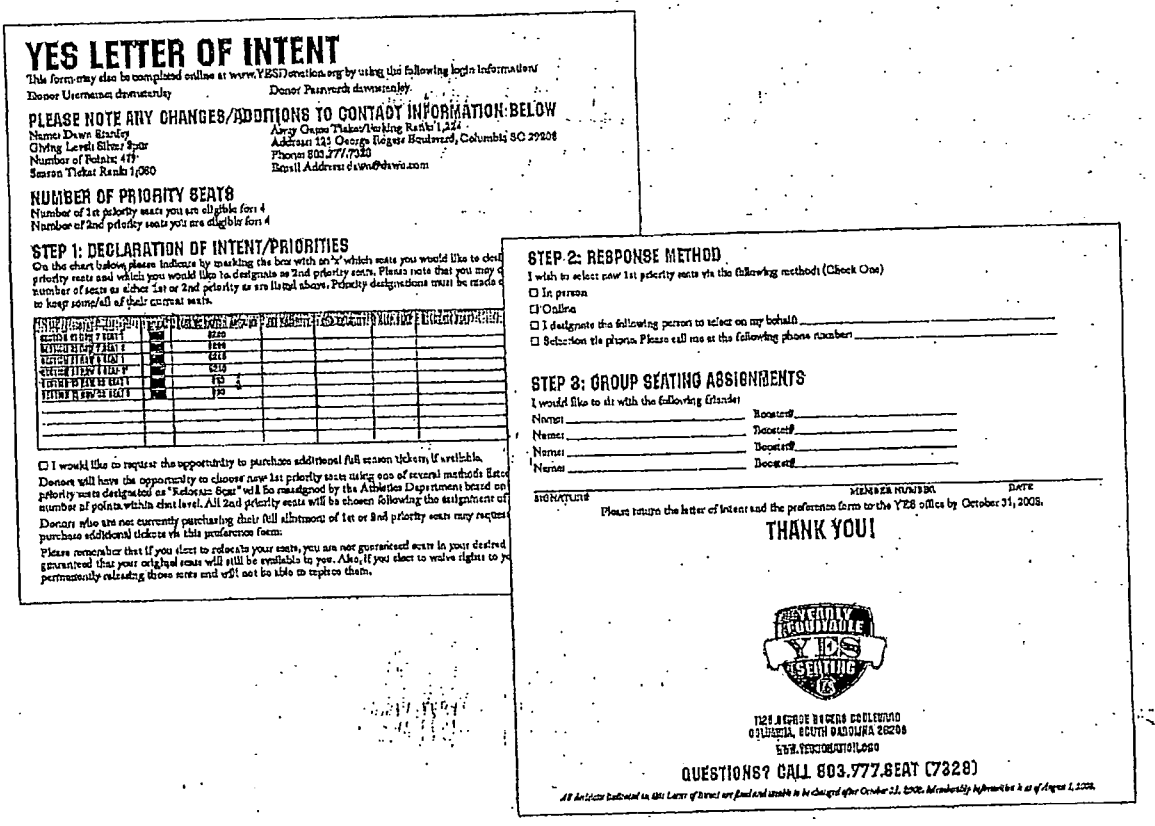
YES
123 GEORGE ROGERS BOULEVARD
COLUMBIA, SOUTH CAROLINA 29208
WWW.YESDONATION.ORG

QUESTIONS? CALL 803.777.SEAT (7328)

All donations indicated on this Letter of Intent are final and unable to be changed after October 31, 2008. Membership information is as of August 1, 2008.

EXAMPLE 2

Dawn has purchased two season tickets in Section 13 (Black) and four season tickets in Section 21 (Blue).
Season tickets (Black Section): $320 per seat x 2 = $640
Black Section YES donation: $50 per seat x 2 = $100
Season tickets (Blue Section): $320 per seat x 4 = $1,280
Blue Section YES donation: $200 per seat x 4 = $800
Dawn's total amount due for the 2009 season: $2,820



YES LETTER OF INTENT

This form may also be completed online at www.YESDonation.org by using the following login information:

Donor Username: dawnstanley Donor Password: dawnstanley

PLEASE NOTE ANY CHANGES/ADDITIONS TO CONTACT INFORMATION BELOW

Name: Dawn Stanley
Giving Level: Silver $50
Number of Points: 475
Season Ticket Rank: 1,080
Away Game Ticket Ranking Rank: 1,224
Address: 123 George Rogers Boulevard, Columbia SC 29208
Phone: 803.777.7328
Email Address: dawn@dawn.com

NUMBER OF PRIORITY SEATS

Number of 1st priority seats you are eligible for: 4
Number of 2nd priority seats you are eligible for: 4

STEP 1: DECLARATION OF INTENT/PRIORITIES

On the chart below, please indicate by marking the box with an 'x' which seats you would like to desi... priority seats and which you would like to designate as 2nd priority seats. Please note that you may c... number of seats as either 1st or 2nd priority as are listed above. Priority designations must be made c... to keep some/all of their current seats.

[illegible]		$320					
[illegible]		$320					
[illegible]		$320					
[illegible]		$320					
[illegible]		$50					
[illegible]		$50					

☐ I would like to request the opportunity to purchase additional full season tickets if available.

Donors will have the opportunity to choose new 1st priority seats using one of several methods listed... priority seats designated as "Relocate Seat" will be reassigned by the Athletics Department based on... number of points within that level. All 2nd priority seats will be chosen following the assignment of...

Donors who are not currently purchasing their full allotment of 1st or 2nd priority seats may request... purchase additional tickets via this preference form:

Please remember that if you elect to relocate your seats, you are not guaranteed seats in your desired... guaranteed that your original seats will still be available to you. Also, if you elect to waive rights to y... permanently relocating those seats and will not be able to replace them.

STEP 2: RESPONSE METHOD

I wish to select new 1st priority seats via the following method (Check One)

☐ In person
☐ Online
☐ I designate the following person to select on my behalf: _____
☐ Selection tie phone. Please call me at the following phone number: _____

STEP 3: GROUP SEATING ASSIGNMENTS

I would like to sit with the following friends:

Name: _____ Booster#: _____
Name: _____ Booster#: _____
Name: _____ Booster#: _____
Name: _____ Booster#: _____

SIGNATURE MEMBER NUMBER DATE

Please return the letter of intent and the preference form to the YES office by October 31, 2008.

THANK YOU!

[illegible] YES SEATING

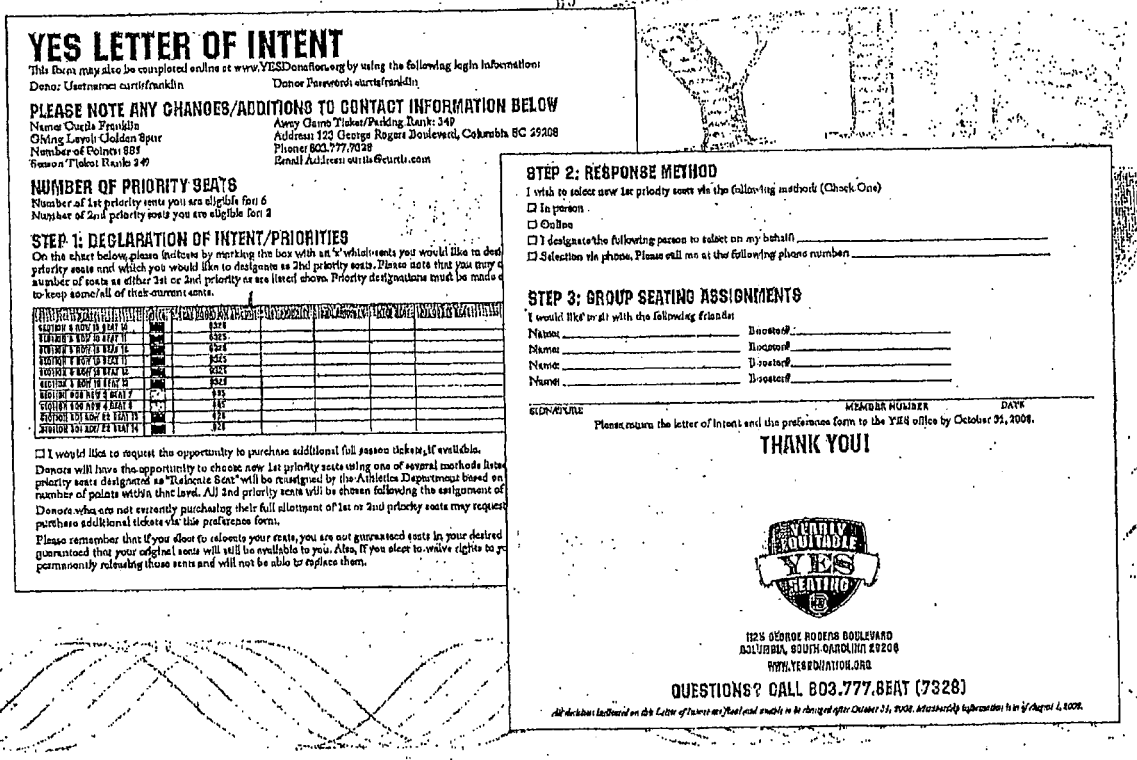
1128 GEORGE ROGERS BOULEVARD
COLUMBIA, SOUTH CAROLINA 29208
WWW.YESDONATION.ORG

QUESTIONS? CALL 803.777.SEAT (7328)

All donations indicated on this Letter of Intent are final and unable to be changed after October 31, 2008. Membership information is as of August 1, 2008.

EXAMPLE 3

Curtis has purchased six season tickets in Section 5 (Red), two season tickets in Section 906 (Yellow) and 2 6-game packages in Section 501 (Black)
Season tickets (Red Section): $320 per seat x 6 = $1,920
Red Section YES donation: $325 per seat x 6 = $1,950
Season tickets (Yellow Section): $320 per seat x 2 = $640
Yellow Section YES donation: $95 per seat x 2 = $190
6-game packages: $265 per seat x 2= $530
Black Section YES donation: $25 (half of full season YES donation) per seat x 2= $50
Curtis's total amount due for the 2009 season: $5,280



YES LETTER OF INTENT

This form may also be completed online at www.YESDonation.org by using the following login information:
Demo: Username: curtisfranklin Demo: Password: curtisfranklin

PLEASE NOTE ANY CHANGES/ADDITIONS TO CONTACT INFORMATION BELOW

Name: Curtis Franklin
Giving Level: Golden Spur
Number of Points: 885
Season Ticket Rank: 349
Away Game Ticket/Parking Rank: 349
Address: 123 George Rogers Boulevard, Columbia SC 29208
Phone: 803.777.7328
Email Address: curtis@curtis.com

NUMBER OF PRIORITY SEATS

Number of 1st priority seats you are eligible for: 6
Number of 2nd priority seats you are eligible for: 2

STEP 1: DECLARATION OF INTENT/PRIORITIES

On the chart below, please indicate by marking the box with an 'x' whether you would like to des
priority seats and which you would like to designate as 2nd priority seats. Please note that you may c
number of seats as either 1st or 2nd priority or are listed above. Priority designations must be made c
to keep some/all of their current seats.

SECTION 5 ROW 10 SEAT 16		$325						
SECTION 5 ROW 10 SEAT 11		$325						
SECTION 5 ROW 10 SEAT 16		$325						
SECTION 5 ROW 10 SEAT 11		$325						
SECTION 5 ROW 10 SEAT 16		$325						
SECTION 5 ROW 10 SEAT 11		$325						
SECTION 906 ROW 2 SEAT 7		$95						
SECTION 906 ROW 2 SEAT 8		$95						
SECTION 501 ROW 22 SEAT 15		$25						
SECTION 501 ROW 22 SEAT 16		$25						

☐ I would like to request the opportunity to purchase additional full season tickets, if available.

Donors will have the opportunity to choose new 1st priority seats using one of several methods listed
priority seats designated as "Relocate Seat" will be reassigned by the Athletics Department based on
number of points within that level. All 2nd priority seats will be chosen following the assignment of

Donors who are not currently purchasing their full allotment of 1st or 2nd priority seats may request
purchase additional tickets via this preference form.

Please remember that if you elect to relocate your seats, you are not guaranteed seats in your desired
guaranteed that your original seats will still be available to you. Also, if you elect to waive rights to y
permanently releasing those seats and will not be able to replace them.

STEP 2: RESPONSE METHOD

I wish to select new 1st priority seats via the following method: (Check One)
☐ In person
☐ Online
☐ I designate the following person to select on my behalf: _____
☐ Selection via phone. Please call me at the following phone number: _____

STEP 3: GROUP SEATING ASSIGNMENTS

I would like to sit with the following friends:
Name: _____ Booster#: _____
Name: _____ Booster#: _____
Name: _____ Booster#: _____
Name: _____ Booster#: _____

SIGNATURE MEMBER NUMBER DATE

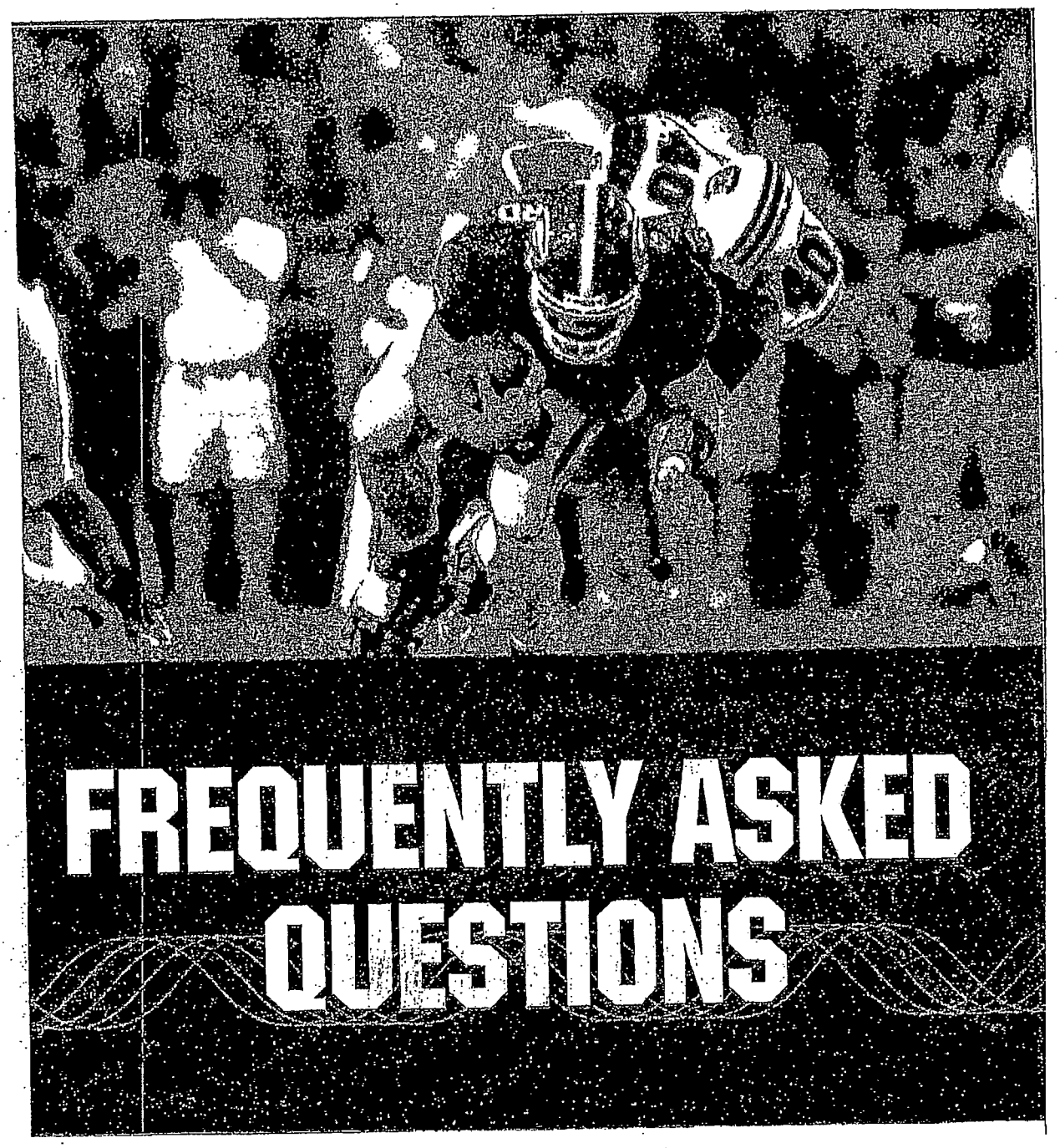
Please return the letter of intent and the preference form to the YES office by October 31, 2008.

THANK YOU!

123 GEORGE ROGERS BOULEVARD
COLUMBIA, SOUTH CAROLINA 29208
WWW.YESDONATION.ORG

QUESTIONS? CALL 803.777.BEAT (7328)

All decisions indicated on this Letter of Intent are final and unable to be changed after October 31, 2008. Miscellaneous information is as of August 1, 2008.



000459

1. IF I ELECT TO RELOCATE ALL OR SOME OF MY CURRENT SEATS, AM I GUARANTEED SEATS IN MY DESIRED SEAT DONATION AREA?

Once a donor elects to relocate a particular seat, he/she is guaranteed to have a seat available, but not necessarily at his or her desired donation level.

2. ARE ALL DONORS GUARANTEED THE SAME NUMBER OF SEATS THEY CURRENTLY HAVE AT EITHER A HIGHER OR LOWER LEVEL?

Donors are guaranteed the same number of seats they currently have at Williams-Brice Stadium, but those seats may not be at their desired donation level if they elect to relocate their current seats.

3. I CURRENTLY PURCHASE A MINI-PACKAGE (6, 5, 4 GAME). HOW DO I PURCHASE SEASON TICKETS?

Donors who purchased four, five, or six game packages in 2008 will have the opportunity to renew those packages for the 2009 season. The number of tickets you receive in your mini-package may increase or decrease on an annual basis due to ticket availability. Current mini-package ticket holders will be contacted by phone if full season ticket books are available.

4. DO I HAVE THE ABILITY TO RELOCATE SEATS TO SIT WITH A FRIEND?

Yes, donors have the option of relocating to sit with a friend, if they follow the following procedure:

1. *Select "Relocate" for same number of current seats you wish to be seated with a friend — Ex: Donor A wants two seats with a friend. He must elect to relocate two of his current seats.*
2. *Return Letter of Intent attached to your friend's Letter of Intent.*
3. *Select seats based on the membership level and priority point total of the friend at the lowest membership level and lowest amount of points — Ex: Friend A is a Full Scholarship member and Friend B is a Century Club member. They will select seats at the Century Club member's scheduled time.*

5. I AM A NEW DONOR. CAN I GET FOOTBALL SEASON TICKETS?

Donors without football season tickets will have rights to select seats based on availability, their membership level, and their points. This selection will take place following the selection of current season ticket holders.

6. WHEN IS MY PAYMENT DUE?

All seat donations, premiums, and ticket money will be due on May 15, 2009.

7. IS THE STADIUM OPEN FOR ME TO SEE SEATS THAT I MIGHT LIKE TO SIT IN?

YES representatives will be available to meet with season ticket holders prior to the selection process. Donors may reach the YES office by calling 803-777-SEAT (7328).

8. WHAT IF I CAN'T MAKE MY SELECTION TIME?

Donors unable to make their selection times in person, via phone, or online may elect someone to choose their seats on their behalf. If a donor misses their seat selection time by more than 30 minutes, the YES office will select seats for the donor based on the best available seats.

8. HOW WERE GIVING LEVELS ESTABLISHED FOR THIS PLAN?

Extensive research of peer institutions was conducted by the Special Committee on Athletics and Athletics Department staff. The seat donation amounts were determined after weighing affordability for fans, equality for fans and the resources needed to battle for championships.

10. HOW MUCH MONEY WILL BE RAISED AND HOW WILL THAT MONEY BE USED?

Approximately $7,600,000 will be raised annually from the Williams-Brice Stadium YES donation plan as a part of The Garnet Way. This money will be used to assist the University in building a comprehensive championship-caliber athletics program. These funds will be used to fund various aspects of the Master Plan for Facilities, including The Dodie Anderson Academic Center, Administration/Coaches Support Building, track renovations, tennis complex renovations, basketball practice facility, and Williams-Brice Stadium renovations.

11. CAN RATES INCREASE NEXT YEAR?

Seat donation amounts will be fixed for three years. The current seat donation levels are not subject to change until the 2012 season. Season ticket prices are subject to change on an annual basis.

12. AS LONG AS I MAINTAIN MY GAMECOCK CLUB MEMBERSHIP, CAN I HAVE ACCESS TO MY SAME SEATS AT WILLIAMS-BRICE STADIUM AFTER THE 2009 SEASON?

If donors maintain their membership level, they will maintain all current seats as long as all seat donations, Gamecock Club membership dues, and season ticket costs are paid by the established deadlines.

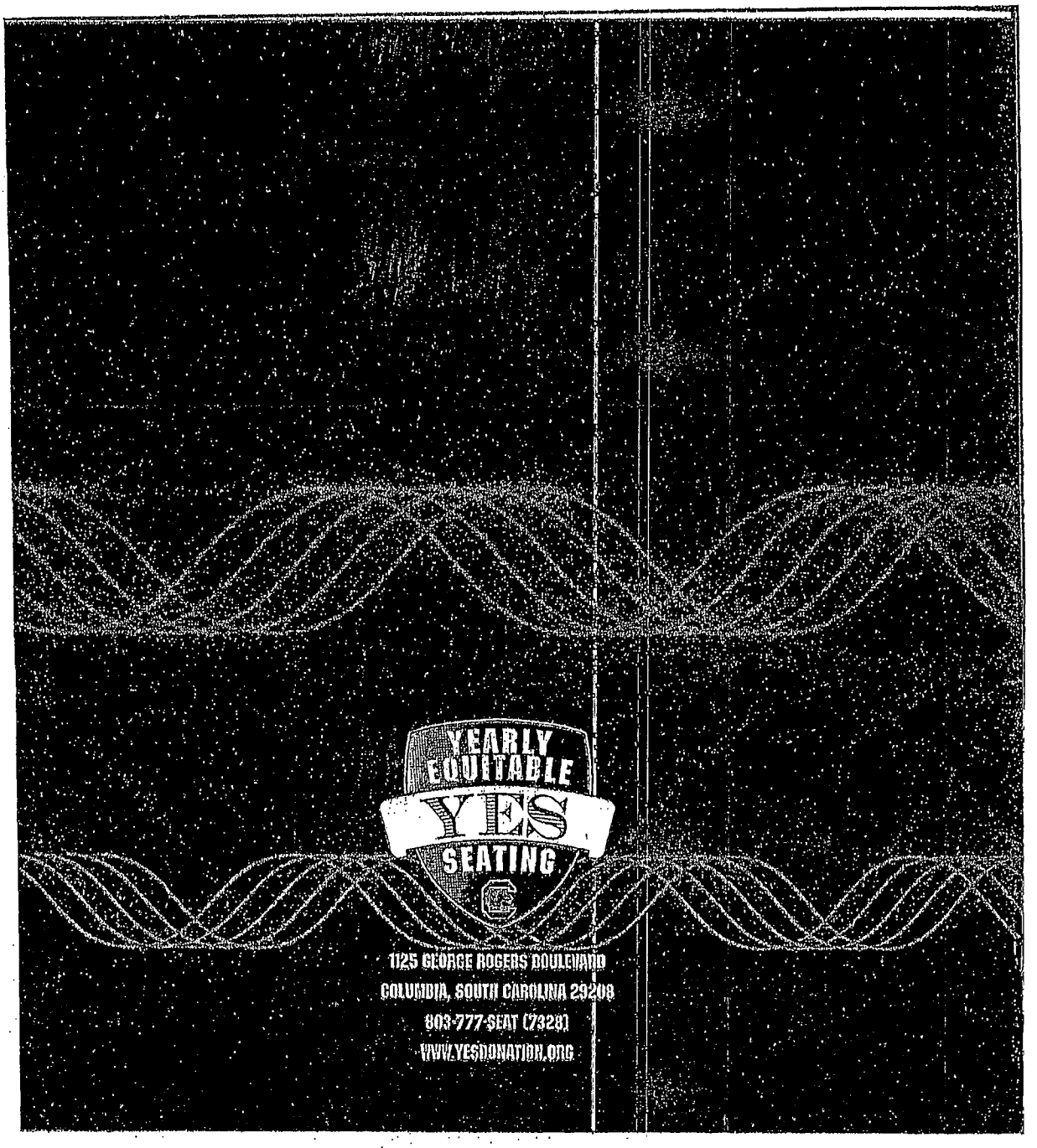
13. WHY DO I HAVE TWO DIFFERENT RANKS WITHIN THE GAMECOCK CLUB?

The Gamecock Club ranks all members by membership level, then points within that level for the purpose of season ticket assignment. However, for the assignment of away game tickets and parking, members are also ranked strictly by points, regardless of membership level.

14. WHY WAS A SEAT DONATION PROGRAM IMPLEMENTED INSTEAD OF RAISING TICKET PRICES?

As opposed to season ticket prices, seat donations are 80% tax-deductible. This means that the seat donations are more fan-friendly than higher ticket prices. YES donations are also key components of The Garnet Way initiative, so by contributing to YES, fans are also contributing to facility upgrades and the effort to develop a championship-caliber athletics program at the University of South Carolina.

THANK YOU!


YEARLY
EQUITABLE
YES
SEATING
1125 GEORGE ROGERS BOULEVARD
COLUMBIA, SOUTH CAROLINA 29208
803-777-SEAT (7328)
WWW.YESDONATION.ORG

000462

EXHIBIT B

UNIVERSITY OF SOUTH CAROLINA
ATHLETICS TICKET OFFICE

801 LINCOLN STREET
COLUMBIA, SOUTH CAROLINA 29208
PHONE 803-777-4274 • 1-800-4SC FANS • FAX 803-777-7971

CUSTOMER NUMBER	PRIOR	CRITERIA DATE
Mr. Gordon H. Timmons 247 Hill Branch Road Ridgeville, SC 29472	LEVEL: LFB	05/15/2009

SEASON TICKET INFORMATION

PREVIOUS SEASON LOCATION	DESCRIPTION	QTY	PRICE	AMOUNT
505 5 19 22	Season Ticket: Adult	4	320.00	1,280.00
410 7 5 8	Season Ticket: Adult	4	320.00	1,280.00
STD 1 779 779	Parking: Stadium Parking	1	595.00	595.00
	Seat Donation: Red	4	325.00	1,300.00
	Seat Donation: Green	4	145.00	580.00

ADDITIONAL ORDER	ORDER	PRICE	AMOUNT
Please adhere to these priority limits, or your request may be cancelled			
at NC State		60.00	
at Alabama		55.00	
at Arkansas		45.00	
*** MISCELLANEOUS ITEMS ***			
2009 Football Season DVD		15.00	
		HANDLING	8.00
		TOTAL REMITTANCE	5043

Make check payable to University of South Carolina
☐ Visa ☐ MC ☐ Discover

To request seat change, please use the line below. If this is not enough room, please attach a letter. Seat changes are subject to availability and are only considered if requested. All requests are reviewed and every effort will be made to accommodate seat change requests. Seating will be based on Gamecock Club priority. Individuals with group requests to sit together should submit all orders together. Group assignments will be based on the application with the lowest priority.

Please provide a daytime phone number in case we need to verify your order.
Evening Phone: (843) 695-1776 Daytime Phone: (843) 470-7540
Email: gordontimmons@bellsouth.net

FOR OFFICE USE ONLY

CA ☐ DS ☐ VI ☐	DATE REC.	BY	BATCH
CK ☒ MO ☐ #659	5/18	BS	88710

000464

EXHIBIT E

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	IN THE FIFTH JUDICIAL CIRCUIT
Gorden H. Timmons, Patricia A. Timmons, Amy M. Timmons now known as Amy M. Mahoney and Amanda E. Timmons, Plaintiffs,	Civil Action No. 2012-CP-40-3931
vs.	**AFFIDAVIT OF JEFF CRANE**
The University of South Carolina and The University of South Carolina Gamecock Club, Defendants.	

2012 MAY 23 PM 1:59
C.C.P. & G.S.

Personally appeared before me Jeff Crane, who, first being duly sworn, deposes and says as follows:

1. I am Jeff Crane. I am a Senior Associate Athletic Director/Development & Gamecock Club for the University of South Carolina ("USC"). This affidavit is based upon my personal knowledge and a review of institutional documents.

2. I graduated in 1998 from Texas Christian University ("TCU"), and I received my Masters in Business Administration in 2004 from TCU. I worked in the TCU athletic department before joining USC in July of 2006.

3. As Senior Associate Athletic Director/Development & Gamecock Club, I am familiar with the implementation of the charge imposed for the use of parking spaces at USC football games.

4. On or about January of 2006, the Gamecock Club mailed a brochure, entitled "Uniting the Gamecock Nation" to all of its Gamecock Club members,

including Lifetime Silver Spur members and Lifetime Full Scholarship members (collectively, "Lifetime Members"). Plaintiff Gorden Timmons is a Lifetime Member. A copy of the brochure is attached hereto as **Exhibit A.**

5. Specifically, the brochure informed all Gamecock Club members that the "USC Athletic Department will begin charging for parking" effective 2007 football season.

6. In March of 2007, Plaintiff Gorden Timmons was invoiced for the parking charge associated with the use of the football parking space assigned to him by the Gamecock Club.

7. In May of 2007, the Gamecock Club received payment from Plaintiff Gorden Timmons for the parking charge.

8. Plaintiff Gorden Timmons has never paid the parking charge under protest.

FURTHER AFFIANT SAYETH NOT.

Jeff Crane

Sworn to before me this 23rd day of May, 2013

Notary Public for
My commission expires: 10/4/2015

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	IN THE FIFTH JUDICIAL CIRCUIT
Gorden H. Timmons, Patricia A. Timmons, Amy M. Timmons now known as Amy M. Mahoney and Amanda E. Timmons, Plaintiffs, vs. The University of South Carolina and The University of South Carolina Gamecock Club, Defendants.	Civil Action No. 2012-CP-40-3931

CERTIFICATE OF SERVICE

2013 MAY 23 PM 1:59

I, the undersigned legal assistant of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for Defendants do hereby certify that I have served all counsel in this action with a copy of the document specified below by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Document: Affidavit of Jeff Crane

Counsel Served: Mark A. Mason, Esquire
Salah H. Hibri, Esquire
The Mason Law Firm, P.A.
Tidewatch Centre on Shem Creek
465 West Coleman Boulevard, Suite 302
Mount Pleasant, South Carolina 29464
Attorneys for Plaintiffs

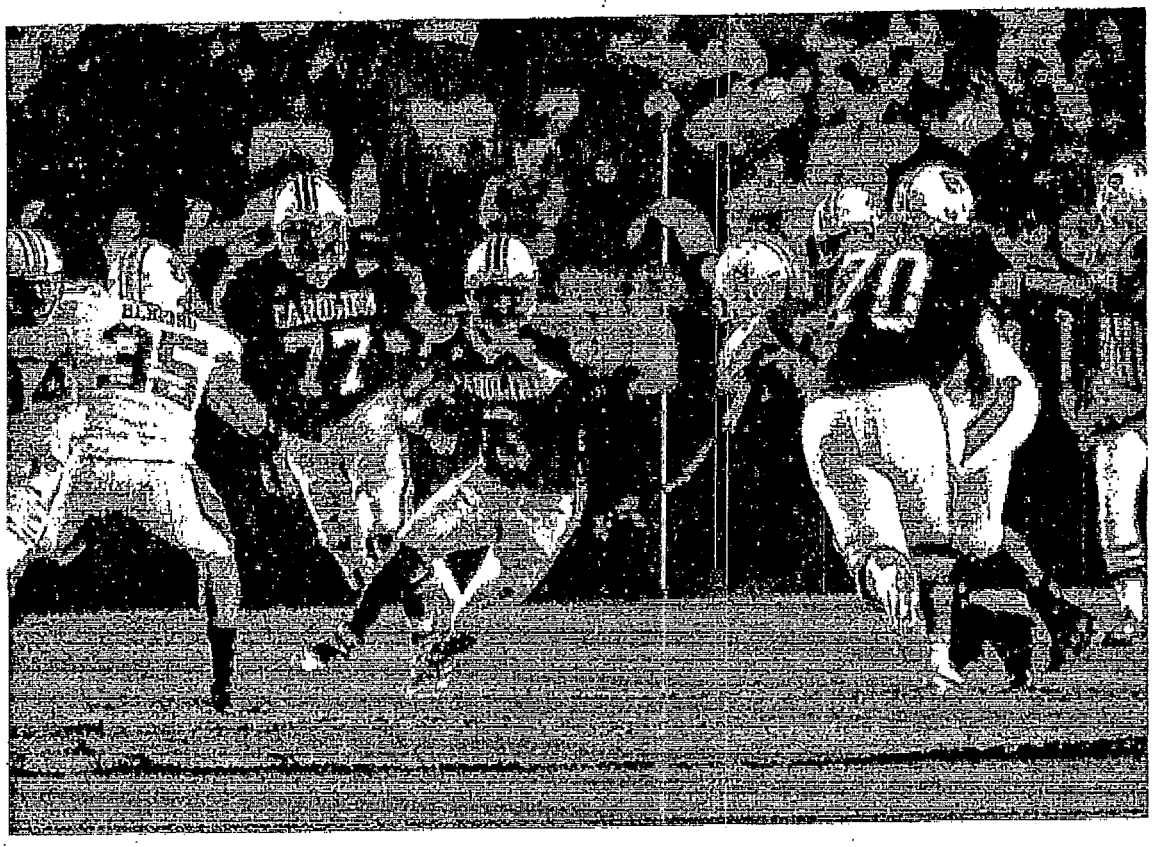
Valerie N. Hampton

May 23, 2013
Columbia, South Carolina

EXHIBIT A

UNITING THE GAMECOCK NATION

A NATION OF ONE
SPECIAL EDITION MAGAZINE



GAMECOCK CLUB

DEFS - 000333

000470

FROM THE GAMECOCK CLUB EXECUTIVE DIRECTOR

Dear Gamecock Fan,

It is hard to believe how quickly time has passed. I can honestly say without any hesitation, this has been the most fun and challenging work of my career. I am motivated and energized by the passion that the Gamecock Nation has for Carolina Athletics. I am honored to lead what I believe will be the best booster club in America.

As I said when I first started, I want to spend a lot of time listening and educating myself on the issues that are before us and the possible obstacles that are keeping us from being a national powerhouse. The good news is that the passion and the resources of our Gamecock Nation are in direct proportion for where we need to be in order to obtain this lofty goal.

As Coach Spurrier said, "Why not us?" and I endorse his words by saying, "It is time for us." However with the drive to succeed, we also know comes sacrifice. Right now, to me sacrifice means we have to take a long, hard look at how we do business and ask ourselves if we are operating in the most efficient means possible to serve our donors.

In a recent Gamecock Club survey in which the results were 4 times the national average for response, 70% of the respondents said that they don't understand what the Gamecock Club does, and they don't feel like they have been treated fairly in the past. As our staff began to reflect upon that staggering statistic, it reiterated the fact that the key elements to any successful organization is communication and being transparent in our decision making process.

With that in mind, the purpose of this special magazine is to try to educate each of our donors on the recent decisions by the Gamecock Club Board of Directors. We want these decisions to be transparent and for our donors to fully understand why these enhancements are necessary. Included in the magazine are the timeline of our meetings, the issues brought before us, with input from various Gamecock Club members, and the explanation of why we chose to put these new policies in place for 2007.

At the end of the day, we realize that despite our efforts, we will not be able to keep each of our 14,444 donors happy. However, our goal is to do what is best for the membership at large, communicate effectively and to work hard to unite the Gamecock Nation one member at a time. In fact, that is the inspiration for our new theme, A Nation of One.

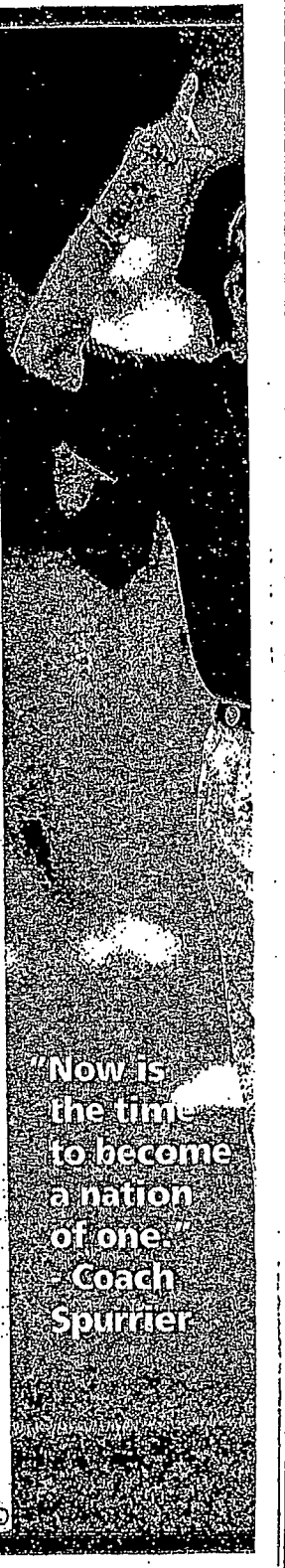
We look forward to the future and trust you will continue to support us as you have so passionately in the past...I am confident that you will!

Chris Wyrick,
Gamecock Club Executive Director

THREE KEY THINGS TO KNOW:

1. In a recent survey of 8,000 Gamecock Club members, 70% said the current system is confusing and unfair.
2. All program enhancements have been developed by the Club presidents and staff and are designed to help our student athletes be more competitive on and off the field.
3. If you have any questions or comments, don't hesitate to contact us at gcclub@gwm.sc.edu or 803.777.4276.

A NATION OF ONE.



000471



GAMECOCK CLUB STAFF DIRECTORY



Chris Wyrick
Executive Director
803.777.4277



Bryan Risner
Director of Major Gifts
803.777.4765



Patrick McFarland
Associate Director
803.777.8751



Logan Anderson
Associate Director
803.777.1778



Daniel Jimenez
Program Coordinator
803.777.3374



Angie Shumpert
Office Manager
803.777.4276



Toni Karl
Executive
Administrative Assistant
803.777.4277



Anne Lisle
Administrative Assistant,
Major Gifts
803.777.0697



Toni Dey
Gamecock Club Assistant
803.777. 4276

A NATION OF ONE.

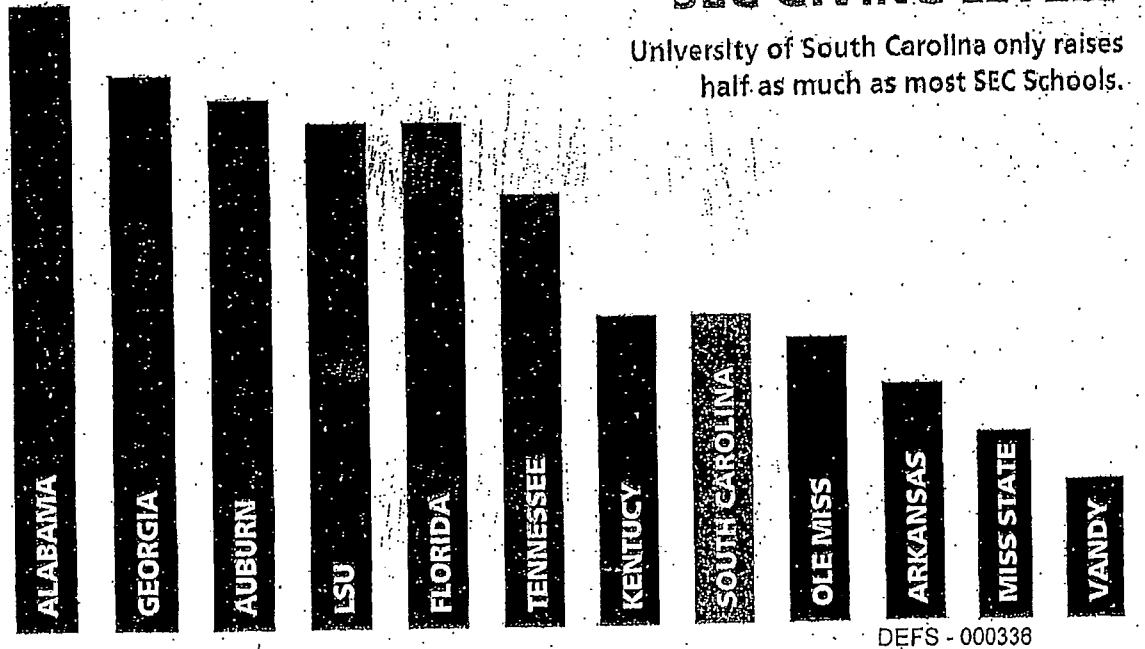
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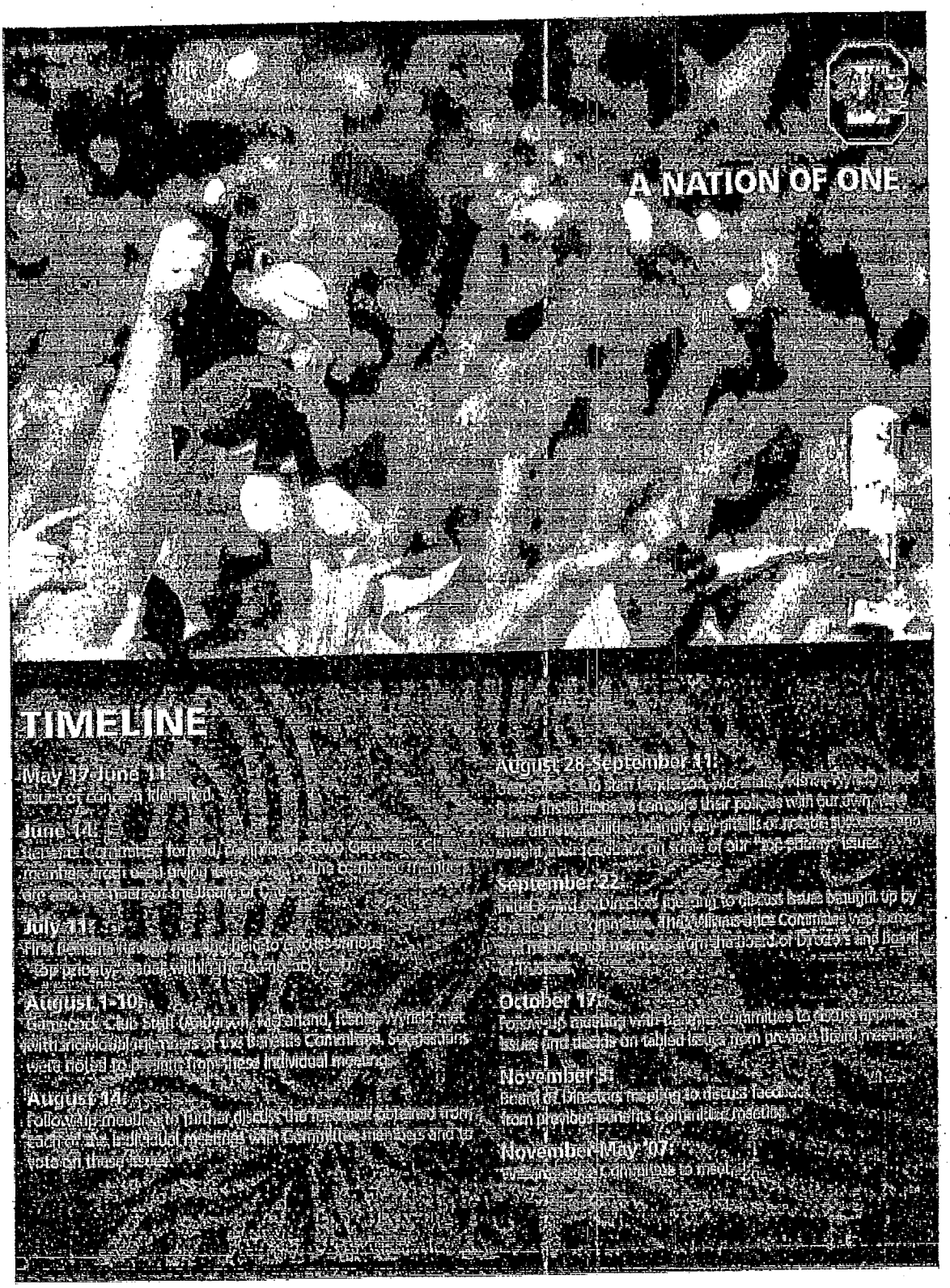
SEC GIVING LEVELS

University of South Carolina only raises half as much as most SEC Schools.



DEFS - 000336

000473


A NATION OF ONE
TIMELINE
May 17-June 11:
June 14:
July 11:
August 1-10:
August 14:
August 28-September 11:
September 22:
October 17:
November 5:
November-May '07:

WHAT'S NEW: THE TOP 10 AI

The following policies and procedures have been voted

1 **We have approved moving to a calendar year:** To help launch the capital campaign. Effective Jan 1, 2008. (see Q&A on page 9)

- Gifts donated between Jan 1- June 30 will apply to 2007 giving year
- Gifts donated between July 1- Dec. 31 (short year) will apply to benefits for 2008 giving year and will receive *double* points for a member's annual gift that year only
- Participating donors are rewarded, and no penalty for not participating

"The action taken by the Gamecock Club Board changing the year end of our accounting period to December 31 of each year will greatly improve the efficiency of the Gamecock Club office by allowing membership applications, ticket renewals, etc. to get out to the members much earlier. Parking and tickets will be mailed in an orderly manner and not at the last minute. The donors who cannot donate between July 1, 2007 and December 31, 2007 will not be penalized."
Ted Girardeau, Silver Spur, Executive Board, Aiken, SC

2 **Short year to calendar year:** Effective July 1, 2007 calendar year.

- If a donor increases their annual gift to a higher giving level during the short year, the Gamecock Club will *quadruple* their priority points for 2008 annual gift only
- Phase in those members that may not be able to "double up" in one year – ex: those who do not contribute during the short year must make their annual gift by March 1, 2008, and then make the following year's donation by Feb 1, 2009

"It may be tough to double up in a year, but if you will be rewarded for it, you might as well go ahead and do it".
Chip Comer, Full Scholarship, York County Board President, Rock Hill, SC

3 **Gamecock Club Donor Levels & Premiums:** Effective January 1, 2007 calendar year.

- Gamecock Club membership levels and premiums can/may be increased every 3 years

"Had we kept up with the inflation rates and tuition increases then we wouldn't be 8th in the SEC."
John Wentzell, Golden Spur, Columbia, SC

4 **Begin charging for parking:** Effective 2007 football season.

- USC Athletic Department will begin charging for parking
- For the '07 football season, Half Scholarship members and above will be assured of their previous year's parking space if they meet the following requirements: 1. make their annual gift on time 2. renew their football tickets on time 3. agree to pay the parking charge
- Roundhouse parking *could* be possible based on availability

"I'm pleased that we have finally found a solution for parking. Maybe now I don't have to walk by so many empty spaces in the Fairgrounds."
Chris Fulmer, Silver Spur, Aiken County Board President, Aiken, SC

5 **Parking assignment for new donors:** Effective 2007 football season.

- As construction at Williams-Brice Stadium, and renovations at the State Fairgrounds begin, reallocation of spaces may be necessary and will be done so by a member's rank in the Gamecock Club. This would include all Gamecock Club lots (State Fairgrounds, Key Road, Stadium Lot, Armory Rd.)
- Parking for new Gamecock Club donors will be allocated based on rank and not donor level

"As the landscape changes around Williams-Brice Stadium it's good to know there is already a system in place for future parking."
Leonard Richey, Silver Spur, Executive Committee, Greenwood, SC

DEFS - 000338

000475

D HOW IT WILL AFFECT YOU!

and approved by the Gamecock Club Board of Directors.

6 **Seat Premium Policy:** Effective 2007 football season.

- Gamecock Club members seated in club premium areas must pay the premium attached to their respective seats, regardless of annual giving level

"It's only fair that we charge for our premium areas across the board for all members."
Herb Sharpe, Half Scholarship, Former Gamecock Club Director, Lexington, SC

7 **New USC Point System:** Based upon the information gathered from the average of several schools that were researched from peer institutions. Effective January, 1 2007.

- 1 point for every $100 donated to the Gamecock Club (same as previous point system)
- 1 point for every $100 donated to an individual sport or Athletics Capital Campaign (since August 1st 2006)
- 2 points for each consecutive year a donation is made to the Gamecock Club (effective Jan 1st 2007)
- 1 point for each season ticket purchased in football, baseball, and men/women's basketball (Beginning 2008)

"We finally have a point system I can understand. It rewards loyalty to the Gamecock Club and season ticketholders."
Mike Thomas, Silver Spur, Executive Committee, Ridgeland, SC

8 **Enforcement of Gamecock Club and Ticket Office deadlines:** Effective immediately.

- Missing deadlines could result in the revoking of and/or relocation of a member's ticket and parking location

"I'm glad that we are doing this because it needs to be done. Gamecock Club members need to understand that deadlines are set for a reason, and there are consequences if you cannot meet them."
Steve Gunter, Golden Spur, Lexington, SC

9 **Golden Spur Program:** Effective January 1, 2007 calendar year. (see benefit chart pg 10)

- Lowered to $10,000
- Must pay for everything (seat premiums, tickets, parking)
- No additional guaranteed benefits
- Premium on basketball seats (2) and cost of season tickets (2) waived during the first 3 years

"We've been getting too good of a deal all along. I respect the fact that it's time for changes to be made, and it starts with us at the top."
Jerry Hart, Golden Spur, Columbia, SC

10 **New Donor Levels & Benefits:** Effective January 1, 2007 calendar year. (see benefit chart pg 10)

- New levels added to minimize the gap between giving levels
- Donor level names were created to reflect actual costs related to student-athlete grant in aids
- No longer allowing second membership at discounted rate

"I've always wanted to increase my giving level from Silver Spur, but I couldn't quite make the jump to $15,000. Now I've got a couple of options."
Wesley Gentry, Silver Spur, Ward, SC

A NATION OF ONE.

DEFS - 000339

000476



COACH SPURRIER: THE MAN BEHIND USC FOOTBALL

"Can the University of South Carolina win the SEC Championship?" I've heard this question asked many times since my arrival two years ago. I have been told that it is not possible to win here. ESPN analyst, Lee Corso, stated, "either South Carolina doesn't have the money or isn't willing to give the money to build the facilities of a championship program."

Prior to my arrival at South Carolina, I witnessed first hand the dedication and support of the Gamecock Nation. I know the desire and will to win is here. The question to be asked is, "What needs to be done to win a championship at South Carolina?"

The good news is that the most difficult aspect of building a program is already in place - fan support. This cannot be obtained overnight by a program striving to be one of the best. At South Carolina, we are lucky to have some of the most loyal fans in America.

The bad news; we rank in the bottom half of the SEC in facilities. To put us in place to compete for championships, we need to upgrade our facilities immediately. First and foremost, we need to concentrate on building a new academic center. The one currently being used is not large enough to accommodate all of our student athletes or the number of computers needed for our athletes. Other areas in need of improvement include our locker room, training room and coaches offices. There are also plans for expansion of Williams-Brice Stadium which will only enhance the atmosphere of game day and increase the stadium to around 90,000.

I am committed and determined to make this football program one of the best in the nation. Our coaching staff, players and sta all know we have an opportunity to do things that have never bee done before. We, as a football program, are dedicating all of ou time and resources to ensure this opportunity does not pass us We are always looking for ways to improve and ways to get bett We are focused on bringing the SEC Championship to Columbi Now, we are asking you to do more. We need you to stand with us in doing everything possible to make the Gamecocks a powe in the SEC and in the nation.

I ask all of you to look at your current level of giving, as I have do with my contribution, and see if you can do more. To reach our goals it is going to take the coaches, players, staff and YOU to work together, think bigger and give more of ourselves than we ever have. Now, let's go win an SEC Championship in the near future. Our goals every year from now until I'm finished as a coa here at Carolina is to win the SEC Championship.

Go Gamecocks,
Coach Steve Spurrier

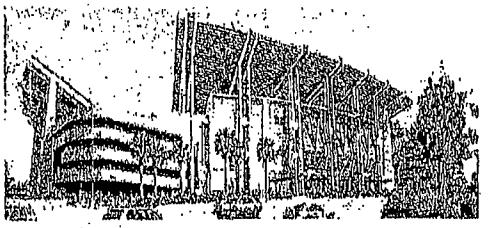
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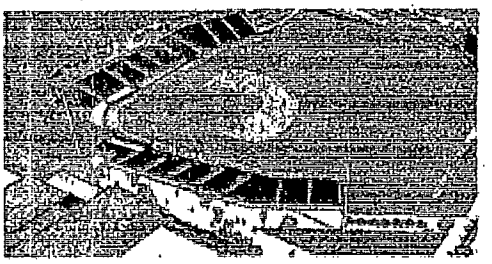
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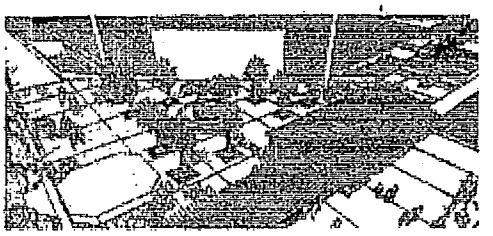
PLANS FOR FACILITIES UNVEILED

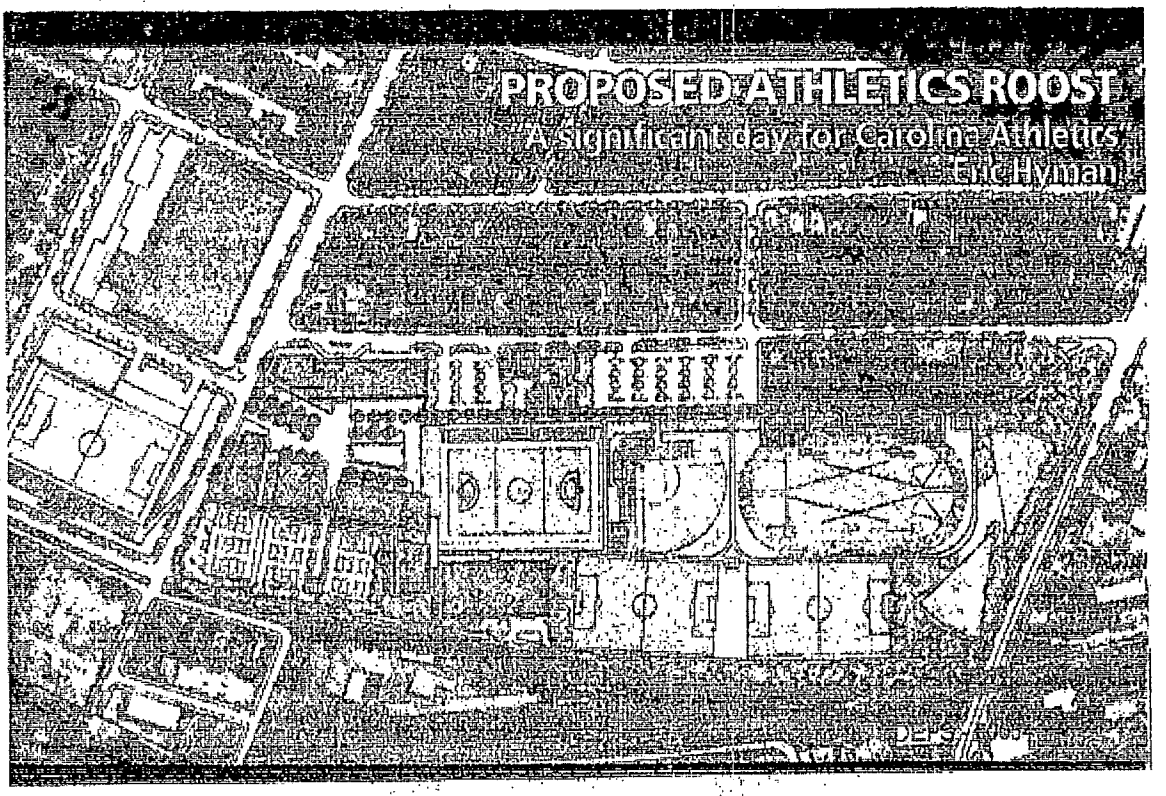
The University of South Carolina Building and Grounds committee unanimously recommended the "Roost" footprint for the Athletics Department Master Plan of Facilities. "This is a significant day for Carolina Athletics," said South Carolina Athletics Director Eric Hyman. "This is a master plan for the long-term–a blueprint for us to follow for the next 10 to 15 years."

The master plan has three distinctive elements–building a new baseball stadium, re-developing the 41-acres known as "the Roost" and addressing the current and future needs of football at Williams-Brice Stadium. The baseball project is currently underway and will be completed in time to open the 2008 season. "The Roost" tract will include an academic enrichment center, an athletic administration building, a state-of-the-art sports medicine facility, a volleyball facility, a Gamecock Club building, improvements to the tennis courts, soccer practice fields, softball stadium and outdoor track, and a new all-purpose field that would accommodate women's lacrosse. Improvements would also be made to Stone Stadium and to the indoor practice facility. The upgrading of Williams-Brice Stadium includes new athletics training facilities and team locker rooms, and the enclosure of the north end zone to expand stadium seating and add office space.









000478

QUESTIONS AND ANSWERS ON THE SHORT YEAR

Why a short year? "The Gamecock Club is trying to put a system in place where if our donors choose to give a gift in the short year, they are rewarded but if they choose not to give a gift, there is no penalty."

One of the major reasons why 70% of our donor base does not understand exactly what we do is because in the past we have done a poor job of communicating our policies and procedures and our system is too difficult. For example, if your donation is made on September 7, is the donation made for the 2007 football season or the 2008 football season? In a recent seminar, we asked that question and only one person in the audience could articulate the correct answer. Therefore, we want to implement a system where we move to a calendar year. Donors who make their gifts in 2007 will receive their benefits for 2008. In order to do this, we have to have a six month giving year to change our calendar. The 2007 giving year will end in June. The Gamecock Club will have a special one time, six month short year (July to December) in order to move to a calendar year and effectively communicate our benefits.

Q - Do I have to make a gift in the short year?
A - Absolutely not. The 2007 gift will be required by June 30, 2007, but a gift in the short year is not required nor will there be a penalty for not participating. However, the donor's 2008 gift must be paid by March 31, 2008 to receive benefits for that year.

Q - How will I be rewarded for participating in the short year?
A - A donor can be rewarded 2 ways for participating in the short year.

1. If a donor, makes an additional gift in the short year, their priority points for that gift will be doubled.

2. If a donor, increases their giving to another giving level in the short year, their priority points for that gift will be quadrupled for the 2008 year only.

Q - Why are priority points important?
A - As donors will see in this magazine, the Gamecock Club has reshaped their priority points system in order to simplify the system and make it easier for our donors to understand. Now more than eve priority points are important because they ultimately determine a donor's rank within the Gamecock Club. In the past, rank was determine by a donor's giving level and then where they ranked within that leve For instances with season tickets, that language will continue to be used but for other circumstances including parking, away game ticket and post season allocation they will be assigned by rank. There will b a number 1 donor through to the 14,444th donor. The points that a donor accumulates will determine their number or rank within the Gamecock Club.

Q - What are the advantages of having a short year?
A - The biggest advantage is having the ability to communicate with donors so they have an understanding of the changes and wh they are needed. Understanding the changes also means that some level of trust is built with our donors. We want this to be simple and transparent. When a donor makes a donation, we want them to kno what their benefits are for that donation, and when they can expect to receive them.

Q - How does this compare with what other schools do?
A - Over the past decade, the trend has changed dramatically and a majority of athletic programs are moving their giving year to a calend year for simplicity and to match up with year end giving.

TRADITIONS

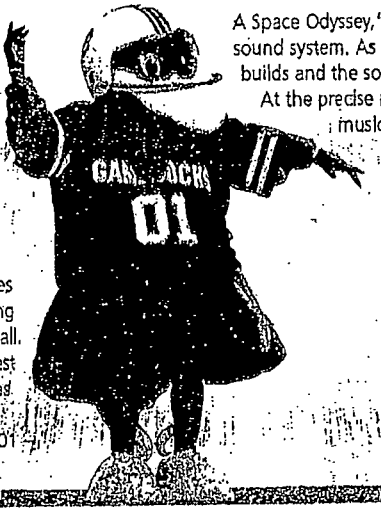
Alumni and fans hold a deep love for the Gamecocks. You won't find more passionate and loyal fans any place in the country. You're a Gamecock for life.

COCKY

South Carolina's official mascot, Cocky, appears at many Gamecock athletics events. Known for his zany antics and widely recognized around the country, Cocky has been a member of Capital One's Mascot All-America team for three straight years.

2001

The University of South Carolina features perhaps the most unique and electrifying pregame entrance in all of college football. The Gamecocks assemble in the southwest corner of Williams-Brice Stadium, and as more than 82,000 fans begin to roar in anticipation, the theme song from "2001 –



A Space Odyssey," begins to blare over the stadium sound system. As the music continues, the excitement builds and the sound of the crowd grows deafening.

At the precise moment, in perfect coordination with the music, the Gamecocks storm onto the field. The Theme "2001," corresponds with the University's Bicentennial, which was celebrated in that year.

A NATION OF ONE

DEFS - 000342

000479

BENEFITS

*based on availability	Century/ Classroom Club $150	Roundhouse/ Tutor Teammate $350	Half-Scholarship/ Book Benefactor $650	Full-Scholarship/ Computer Contributor $1,350	Silver Spur/ Meal Member $3,000	Garnet Spur/ Housing Host $7,000	Golden Spur/ Tuition Tier $10,000	Platinum Spur/ Scholarship Society $15,000	Diamond Spur/ Commencement Circle $30,000
Car Decals	✓	✓	✓	✓	✓	✓	✓	✓	✓
Membership Cards	✓	✓	✓	✓	✓	✓	✓	✓	✓
Spurs & Feathers	✓	✓	✓	✓	✓	✓	✓	✓	✓
Calendars (wall and pocket)	✓	✓	✓	✓	✓	✓	✓	✓	✓
Elevator access at Williams-Brice	✓	✓	✓	✓	✓	✓	✓	✓	✓
Scholarship Lounge Access			✓	✓	✓	✓	✓	✓	✓
Opportunity to purchase parking (first come first serve)			✓						
Opportunity to purchase parking* (assigned parking)				✓	✓	✓	✓	✓	✓
Media Guides (pending NCAA ruling)				✓	✓	✓	✓	✓	✓
Opportunity to purchase premium seats					✓	✓	✓	✓	✓
50 yard line dinner						✓	✓	✓	✓
Access to McGuire Room							✓	✓	✓
Student Athlete scholarship assigned								✓	✓
Complimentary away trip (football/basketball)*									✓

ALMA MATER

"We Hail Thee Carolina"

We Hail thee, Carolina, and sing thy high praise.
With loyal devotions, remembering the days
When proudly we sought thee, thy children to be:
Here's a health, Carolina, forever to thee!

Since pilgrims of learning, we entered thy walls
And found dearest comrades in thy classic halls
We've honored and loved thee as sons faithfully;
Here's a health, Carolina, forever to thee!

Generations of sons have rejoiced to proclaim
Thy watchword of service, thy beauty and fame;
For ages to come shall their rallying cry be:
Here's a health, Carolina, forever to thee!

Fair shrine of high honor and truth, thou shalt still
Blaze forth as a beacon, thy mission fulfill,
And crowned by all hearts in a new jubilee:
Here's a health, Carolina, forever to thee!



THE FIGHT SONG

"The Fighting Gamecocks Lead The Way"

Hey, Let's give a cheer,
Carolina is here,
The Fighting Gamecocks
lead the way.

Who gives a care,
If the going gets tough,
And when it is rough,
That's when the Cocks get going.

Hail to our colors of garnet and black,
In Carolina pride have we.

So, Go Gamecocks Go – FIGHT
Drive for the goal – FIGHT!
USC will win today – GO COCKS!
So, let's give a cheer, Carolina is here.
The Fighting Gamecocks All The Way!

DEFS - 000343

000480

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	IN THE FIFTH JUDICIAL CIRCUIT
Gorden H. Timmons, Patricia A. Timmons, Amy M. Timmons now known as Amy M. Mahoney and Amanda E. Timmons,	)	Civil Action No. 2012-CP-40-3931
Plaintiffs,	)	**CERTIFICATE OF SERVICE**
vs.	)	
The University of South Carolina and The University of South Carolina Gamecock Club,	)	
Defendants.	)	

I, the undersigned legal assistant of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for Defendants do hereby certify that I have served all counsel in this action with a copy of the document specified below by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Document: Defendants' Memorandum in Support of Motion for Summary Judgment

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June 4, 2013
Columbia, South Carolina

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal (redacted) contains all material proposed to be included by any of the parties and not any other material.

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March 17, 2015
Columbia, SC

00482

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2012-CP-40-3924
Appellate Case No. 2013-002295

Linda Rodarte, J. Perry Kimball, George M. Lee, III,
Mena H. Gardiner and John Love,

of which
George M. Lee, III, Mena H. Gardiner and John Love.....Appellants,

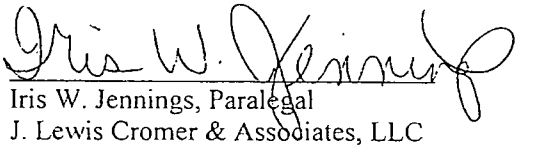
v

The University of South Carolina & The University of
South Carolina Gamecock Club,.....Respondents.

PROOF OF SERVICE

I certify that I, the undersigned employee of J. Lewis Cromer & Associates, L.L.C., caused to have served a copy of the Record on Appeal (Redacted) on counsel for the Respondents by hand delivering, on March 17, 2015, at the law offices of Sowell Gray Stepp & Lafitte, LLC, to the attention of Robert E. Stepp, Esquire & Bess J. DuRant, Esquire, 1310 Gadsden Street, Columbia, South Carolina 29201

March 17, 2015



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00483

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
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G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2012-CP-40-3924
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Linda Rodarte, J. Perry Kimball, George M. Lee, III,
Mena H. Gardiner and John Love,

of which
George M. Lee, III, Mena H. Gardiner and John Love, ... Appellants,

v.

The University of South Carolina & The University of
South Carolina Gamecock Club, ... Respondents.

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STATEMENT OF THE ISSUES ON APPEAL

I. DID THE TRIAL COURT ERR IN HOLDING THAT THE CONTRACT WAS UNAMBIGUOUS AND GRANTING RESPONDENTS' MOTION FOR SUMMARY JUDGMENT?

II. DID THE TRIAL COURT ERR IN EXCLUDING EXTRINSIC EVIDENCE AND GRANTING RESPONDENTS' MOTION FOR SUMMARY JUDGMENT?

III. DID THE TRIAL COURT ERR IN EXCLUDING EVIDENCE OF THE PARTIES' CONDUCT AND GRANTING RESPONDENTS' MOTION FOR SUMMARY JUDGMENT?

IV. DID THE TRIAL COURT ERR REJECTING EQUITABLE ESTOPPEL AND COLLATERAL ESTOPPEL AND GRANTING RESPONDENTS' MOTION FOR SUMMARY JUDGMENT?

STATEMENT OF THE CASE

On June 7, 2012, Linda Rodarte, J. Perry Kimball, George M. Lee, Mena H. Gardiner, and Mitchell Bailey filed an action against the Respondents concerning a breach of their lifetime contract regarding their football parking spaces near Williams Brice Stadium. On July 6, 2012, the plaintiffs amended their Complaint and John Love was substituted for Mitchell Bailey. (R., p. 191).[1] Both the plaintiffs and respondents filed motions for summary judgment with the Court and both provided legal memoranda in support and opposition. (R., pp. 81 - 185).

The Court held oral arguments on August 9, 2013 before the Honorable G. Thomas Cooper, Jr. in Richland County. (R. p. 30). Prior to the hearing, Harry Gregory (Lifetime member and served on the Gamecock Board) was subpoenaed by Respondents to appear for a deposition on August 20, 2013 and also provide documents pursuant to the subpoena *duces tecum*. (R. p. 270). After the hearing, opposing counsel produced to undersigned counsel approximately 261 pages of documents that Mr. Gregory provided in response to the subpoena. *Id.* The deposition of Mr. Gregory had been postponed around this time period. *Id.* Undersigned counsel notified the Court of this development by way of letter. *Id.*

On August 27, 2013, Judge Cooper filed an Order granting Defendants' Motion for Summary Judgment and denying Plaintiffs' Motion for Summary Judgment. (R. p. 10). Plaintiff filed a Motion for Reconsideration (R. p. 6) which was denied by Judge Cooper by Order dated September 17, 2013. (R. p. 4). Plaintiff filed a timely notice of appeal and this appeal followed.

STATEMENT OF FACTS

The University of South Carolina ("USC") is a state university with an athletics program

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1 Linda Rodarte voluntarily dismissed her claims on June 7, 2013 and she is no longer a party. Perry

including football. "The Gamecock Club is an organization which boosts and promotes USC athletics and with whom USC has partnered in the promotion of its programs and in the awarding of privileges in attendance at athletic events on USC property based upon financial contributions made by supporters of athletics." (R. p. 191). In the mid-1980s, the Lifetime Membership program was established by the Gamecock Club. Certain rights and privileges regarding USC athletics were offered to participating donors ("Lifetime Members")2 in exchange for certain consideration. The terms of the Lifetime Membership agreement was memorialized in a written contract ("Lifetime Membership contract" or the "contract"). The Appellants, George M. Lee, Mena H. Gardiner and John Love, are Lifetime Members of the Gamecock Club. (R., pp. 91 - 104).

Each contract included an attached "Exhibit A", which stated among other benefits, each Lifetime Full Scholarship member and Lifetime Scholarship (Silver Spur) member would receive "assigned reserved parking." (R., pp. 91 - 104). Stuart Hope originally entered his Lifetime Contract in 1986 and the rights and privileges to the contract passed to his named beneficiary, Mena Gardiner, at the time of his death. Marion "Bubba" Hope, son of Stuart Hope, was present during the negotiations his father had with the Gamecock Club concerning the Lifetime Membership Contract. (R. pp. 218-225). The Hopes were assured by representatives of the Respondents that they would have top priority to the items set forth in Exhibit A, including "assigned reserved parking" for football games. *Id.* John Love executed his contract in 1990, and he was made assurances of his specific parking location as part of his Lifetime contract. (R. pp. 235-269). Mr. Love had previously

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Kimball has resolved his issues with the Respondents and is not an Appellant to this appeal.

2 There are two levels within the Lifetime Membership—Lifetime Silver Spur Memberships and Lifetime Scholarship Memberships. Lifetime Silver Spur Memberships paid $40,000.00 or more while Lifetime Scholarship Memberships paid $25,000.00-$40,000.00 in consideration. Within the class of Lifetime Members, the Lifetime Silver Spur Members hold a higher priority on

donated $10,000.00 to have a premium parking space for football games, and this parking space then improved when he became a Lifetime member. *Id.* In May of 1990, George M. Lee executed his Lifetime contract, wherein he was given a specific parking place in exchange for a life insurance policy and was given assurances that he would be given excellent parking on the apron of the stadium. (R. pp. 294-295, 226-230).

Plaintiffs' contracts were honored, collectively for decades, until the Summer of 2012. (R. pp. 294-295, ¶ 5). Pursuant to their contracts, plaintiffs were given priority in parking assignments ahead of non-lifetime donors. (*Id.* at ¶¶ 5-6). However, through the recent actions taken by the defendants, the plaintiffs' priority in parking was rescinded by the defendants and numerous non-lifetime donors have been given priority ahead of each plaintiff. (*Id.* at ¶¶ 6-7).

As referenced in the Statement of the Case on Appeal, Harry Gregory provided numerous documents, including an email dated March 26, 2012, a flyer for the Lifetime Membership, a letter from Chris Wyrick (then Executive Director of the Gamecock Club) dated March 5, 2008, and Gamecock Club Board of Directors Meeting Minutes from May 18, 2007. (R. pp. 299 -302). These documents show that Lifetime Members were considered to have the highest priority in all matters including priority.

The aforementioned actions of the Respondents amounted to a breach of the Appellants' respective contracts and this action followed.

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certain rights and privileges than the Lifetime Scholarship Members.

ARGUMENT

I. BECAUSE THE CONTRACT BETWEEN RESPONDENTS AND APPELLANTS CONTAINS LANGUAGE THAT IS AMBIGUOUS, THE TRIAL COURT ERRED WHEN IT GRANTED RESPONDENTS' MOTION FOR SUMMARY JUDGMENT AS TO THE BREACH OF CONTRACT CLAIM.

The trial court erred by holding that the "assigned reserved parking" term in the lifetime contract is unambiguous and granting the Respondents' motion for summary judgment as to the breach of contract claim.3 Assuming for purposes of this argument that Respondents' purported contractual interpretation of this term is reasonable for an ambiguity analysis, the Appellants' interpretation is also reasonable and thus the term is ambiguous.

"The purpose of all rules of contract construction is to determine the parties' intention." *Lindsay v. Lindsay*, 328 S.C. 329, 337, 491 S.E.2d 583, 587-88 (Ct. App. 1997). To determine this intention, the courts "will endeavor to determine the situation of the parties, as well as their purposes at the time the contract was entered into." *Id.* "A contract is ambiguous when the terms of the contract are reasonably susceptible of more than one interpretation." *S.C. Dep't of Natural Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302-03 (2001) (citing *Hawkins v. Greenwood Dev. Corp.*, 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct. App. 1997)). "It is a question of law for the court whether the language of a contract is ambiguous." *Id.* An ambiguity is "determined from the entire contract and not from isolated portions of the contract." *Farr v. Duke Power Co.*, 265 S.C. 356, 362, 218 S.E.2d 431, 433 (1975).

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3 In their motion for reconsideration, the Appellants asked Judge Cooper to reconsider his Order granting summary judgment for several reasons, including that there was a prior inconsistent ruling in the *Timmons et al v. The University of South Carolina et al*, (2012-CP-40-03931), the defendant moved for summary judgment on the same issue concerning the "assigned reserved parking" term of Exhibit A to the same type of lifetime contract. Judge Cooper denied the defendants' motion for summary judgment by order dated July 18, 2013. (R. pp. 307-481).

> A contract is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business.

Hawkins, 328 S.C. at 592, 493 S.E.2d at 878 (quoting 17A Am.Jur.2d *Contracts* § 338, at 345 (1991)).

The Respondents argued and the trial court erroneously held that the term "assigned reserved parking" is unambiguous and clearly means that the Respondents only have to provide "assigned reserved parking" somewhere and are fee to change this parking at will. The trial court erred by refusing to acknowledge that there are other reasonable interpretations of the term in questions. The Appellants contend that the contract provided a specific "assigned reserved parking" location which was on the "apron" of the stadium in the "shadow" of Williams-Bryce. This is the more reasonable interpretation, yet it was discarded by the trial court in error. The words "assigned" and "reserved" do not themselves convey some right to change the parking at any given moment or right to provide whatever parking the Respondents choose to give even if it is the worst parking available, yet this is what the trial court's interpretation would allow. The use of "assigned" and "reserved" in this term is significant, as it indicated that the Respondents will be assigned a particular parking space that is reserved for their use. The term does not include other language that indicates this parking space may be changed at whim and relocated to wherever the Respondents choose.

Because the plain language of the contract does not provide for a change in the assigned reserved parking, the Court may look to the "customs, practices, [and] usages" of the Gamecock Club to interpret the term. This review quickly reveals that the lifetime members were assigned and reserved the best available parking on the apron of Williams-Bryce and the lifetime members kept

these same parking places until the parking around the stadium was removed completely for Gamecock Club members based on safety reasons (this is the event giving rise to this action). If these specific parking places no longer exist for any Gamecock Club member, then the Appellants as lifetime members should be given equivalent parking spaces, which would be the best available parking spaces that do still exist since they used to be parked against the stadium itself.

Under the trial court's view, the term "assigned reserved parking" essentially provides little to no benefit to the Appellants and makes it a meaningless term to the agreement—all interpreted from the face of the contract itself as the trial court found the term unambiguous.

> Common sense and good faith are the leading touchstones of the inquiry. Where a construction of a contract makes it unusual or extraordinary and another construction, equally consistent with the language employed, would make it reasonable, fair, and just, the latter construction must prevail. An interpretation which evolves the more reasonable and probable contract should be adopted, and a construction leading to an absurd result should be avoided.

Farr, 265 S.C. at 362, 218 S.E.2d at 434. The trial court's holding creates an absurd result that is unreasonable, unfair and unjust, but the Respondent's interpretation leads to a more reasonable result. Thus this term of the contract is ambiguous and the Respondents' motion for summary judgment should have been denied. Moreover, extrinsic evidence can be used to explain this ambiguity.[4] Any ambiguity in the term "assigned reserved parking" should be construed against the Respondents as drafters of the lifetime contracts. *Myrtle Beach Lumber Co. v. Willoughby*, 274 S.E.2d 423, 426 (S.C. 1981) (stating that, "an ambiguity in a written contract should be construed most strongly against the drafters").

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4 The trial court indicates that silence as to an issue does not create an ambiguity, and also that "a court cannot look to evidence of custom or usage to contradict, vary, or explain the terms of an unambiguous contract." (R. p. 16). These arguments are unpersuasive and inapplicable in the

Based on the aforementioned reasons, the trial court erred in ruling that the contract was unambiguous and the Respondent's motion for summary judgment should be denied.

II. BECAUSE EXTRINSIC EVIDENCE WAS IMPROPERLY EXCLUDED, THE TRIAL COURT ERRED WHEN IT GRANTED RESPONDENTS' MOTION FOR SUMMARY JUDGMENT AS TO THE BREACH OF CONTRACT CLAIM.

The trial court held that they will not consider extrinsic or parol evidence offered by the Appellants. (R. pp. 17-19). The trial court holds that the Appellants' offering of extrinsic evidence fails for two reasons: 1) that the contract is clear and unambiguous thus the court will not look outside the four corners of the agreement and 2) evidence of prior or contemporaneous understandings may not be used to vary, contradict or explain the terms of the written agreement. *Id.* This exclusion of extrinsic evidence is clear error and should be reversed.

First, the contract is ambiguous for the reasons set forth in Section I above, thus it was appropriate to look at extrinsic evidence. "Once the court decides the language is ambiguous, evidence may be admitted to show the intent of the parties." *S.C. Dep't of Natural Res. v. Town of McClellanville*, 345 S.C. at 623, 550 S.E.2d at 303 (citing *Hawkins*, 328 S.C. at 592, 493 S.E.2d at 878). "The determination of the parties' intent is then a question of fact." *Id.* Because the contract is ambiguous, the trial court should have considered the extrinsic evidence and denied the Respondents' motion for summary judgment so that the questions of fact could be determined at trial.

Second, the court could look at extrinsic or parol evidence "for the purpose of determining the intent of the parties and clearing up any ambiguity." *Lindsay*, 328 S.C. at 337, 491 S.E.2d at 587-88. For the reasons previously discussed above, the contract term is ambiguous, thus it is appropriate

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present matter for the reasons set forth in Sections II and III.

to look at the extrinsic or parol evidence to determine intent and clear up the ambiguity. This is different than using such evidence to vary or contradict the terms of the agreement. The trial court notes that the term "assigned reserved parking" does not promise that parking would be in any location nor does it provide for priority, thus they cannot use extrinsic evidence to supply language. This argument fails when one considers that the contract is equally devoid of language allowing the Respondents to reassign the lifetime members parking when there has already been parking spaces "assigned" and "reserved" and there is also no language allowing them to assign them to assign and reserve any parking place that the Respondents so choose. Thus the contract is ambiguous and extrinsic or parol evidence is necessary to determine intent of the parties. *See Ebert v. Hill*, 320 S.C. 331, 338, 465 S.E.2d 121, 125 (Ct. App. 1995) ("An ambiguous contract is one capable or being understood in more ways than one, an agreement obscure in meaning through indefiniteness of expression, or having a double meaning.").

The trial court argues that silence on a specific issue does not create an ambiguity and does not permit the court from looking at extrinsic evidence to determine the parties intent. (R. p. 16).

> However, where an agreement is silent as to a particular matter and because of the nature and character of the transaction an ambiguity arises, parol evidence may be admitted in order to supply a deficiency in the language of the contract. In such instance, parol evidence is admissible not to contradict the terms of the written agreement, but to determine the intent of the parties as to that particular matter.

Ebert, 320 S.C. at 339-40, 465 S.E.2d at 126 (citing *U.S. Leasing Corp. v. Janicare Inc.*, 294 S.C. 312, 364 S.E.2d 202 (Ct. App. 1988)). The ambiguous term of "assigned reserved parking" neither states how the football parking would be assigned and reserved nor does it include language allowing the Respondents to alter or change the assigned reserved parking. Further, the agreement is silent as

to what the parties would do should the assigned reserved parking on the apron of the stadium was ever gone for security reasons. Because of the nature and character of this matter an ambiguity arises thus extrinsic and parol evidence is allowed to supply a deficiency and determine the parties' intent. *Id.* The evidence in this case shows that the parties intended for the assigned reserved parking to be the best available on the apron of the stadium. Moreover, the course of dealing between the parties supports the Appellants' interpretation of the contract. The trial court erred by failing to consider extrinsic and parol evidence, and the order granting Respondent's motion for summary judgment should be denied.

III. BECAUSE THE PARTIES' CONDUCT WAS IMPROPERLY EXCLUDED, THE TRIAL COURT ERRED WHEN IT GRANTED RESPONDENTS' MOTION FOR SUMMARY JUDGMENT AS TO THE BREACH OF CONTRACT CLAIM.

The trial court erroneously held that the parties' conduct after the execution of the contract could not be considered to determine their intent as the contract is unambiguous. (R., pp. 19-20). As an initial matter, the contract is ambiguous as discussed above, thus evidence of the parties' conduct may be used to determine intent and is not being used to contradict or vary a clear and unambiguous term of the contract. *See S.C. Dep't of Natural Res.*, 345 S.C. at 623, 550 S.E.2d at 303. The parties' conduct, including custom and usage, may be used to determine this intent of the parties' for this ambiguous agreement. *Hawkins*, 328 S.C. at 592, 493 S.E.2d at 878 (quoting 17A Am.Jur.2d *Contracts* § 338, at 345 (1991)).

"The practical interpretation of the contract by the parties to it for any considerable period of time before it becomes the subject of controversy is entitled to great, if not controlling, influence."

Farr, 265 S.C. at 363, 218 S.E.2d at 434. The Appellants, as contractual lifetime members, were provided assigned reserved parking spaces on the apron of the football stadium, which was the best parking at the time, and they kept these spaces for nearly 25 years until the events giving rise to this dispute. The letter from Mr. Wyrick discussing priority of lifetime members and the Gamecock Club Board Meeting Minutes both show that Respondents intended for the lifetime members to have top priority of all Gamecock Club members and come before the non-lifetime members. (Letter and Minutes). Interestingly, the Board Minutes indicate that the purchase of the Farmer's Market was already being considered in the same meeting where Mr. Wyrick addressed lifetime members. Further, discussions held prior to the agreement with the lifetime members helps to determine the parties' intent, where the lifetime members were assured they would receive the best parking available.

IV. BECAUSE EQUITABLE ESTOPPEL AND COLLATERAL ESTOPPEL WERE INCORRECTLY REJECTED, THE TRIAL COURT ERRED WHEN IT GRANTED RESPONDENTS' MOTION FOR SUMMARY JUDGMENT AS TO THE BREACH OF CONTRACT CLAIM.

The trial court erroneously rejected the equitable estoppel and collateral estoppel arguments made by Appellants.

"Courts have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible." *Ex Parte Dible*, 279 S.C. 592, 595-96, 310 S.E.2d 440, 442 (S.C. Ct. App. 1983). Assuming *arguendo* that there was no valid contract or a clear breach of the same, the defendants are equitably estopped, by their conduct, from disclaiming liability for their actions. Where a party exercises "(1) conduct which amounts to a false representation, or conduct calculated to convey the impression that the facts are otherwise, (2) the

intention that such conduct shall be acted upon by the other party, and (3) knowledge of the facts" they may be estopped from arguing in contravention of their actions, intention and knowledge. *Provident Life & Accident Ins. Co. v. Driver*, 317 S.C. 471, 477, 451 S.E.2d 924, 928 (S.C. Ct. App. 1994). To assert equitable estoppel that party must show "(1) a lack of knowledge or the means of knowledge of truth as to facts in question, (2) justifiable reliance upon the conduct of the party estopped; and (3) prejudicial change in the position of the party claiming estoppel. *Walton v. Walton*, 282 S.C. 165, 168, 318 S.E.2d 14, 16 (1984). Here the Respondents made numerous assurances to the Appellants that they would have highest priority as Lifetime Members and would have the parking on the apron of the stadium which is the best available parking. The Respondents should be equitably estopped from now claiming that they can change the Appellants' parking at their leisure and may provide parking wherever they choose even if substandard to what was promised and given to Appellants for the last 20 plus years.

The Respondents should also be collaterally estopped from asserting that the term "assigned reserved parking" is not ambiguous. In *Harvey J. Rosen, Joseph B. Rosen and Rebecca Nurick v. The University of South Carolina and The University of South Carolina Gamecock Club*, Op. No. 2011-UP-331 (S.C.CT.APP. filed June 27, 2011)(unpublished), the Court found that this exact three-word term in the same Exhibit A to a Lifetime Membership Contract was ambiguous. Therefore, to the extent the defendants assert a position contrary to the Court of Appeals holding in that case they are collaterally estopped from doing so. *See Aaron v. Mahl*, 381 S.C. 585, 592, 674 S.E.2d 482, 486 (S.C. 2009) ("Collateral estoppel prevents a party from re-litigating an issue in a subsequent suit which was actually and necessarily litigated and determined in a prior action.").

CONCLUSION

Based on the foregoing discussion and analysis, the Appellants respectfully request that the Court reverse the judgment of the trial court and remand for a new trial.

May 19, 2014

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2012-CP-40-3924
Appellate Case No. 2013-002295

Linda Rodarte, J. Perry Kimball, George M. Lee, III,
Mena H. Gardiner and John Love,

of which
George M. Lee, III, Mena H. Gardiner and John Love.....Appellants,

v

The University of South Carolina & The University of
South Carolina Gamecock Club,.....Respondents.

PROOF OF SERVICE

I certify that I, the undersigned employee of J. Lewis Cromer & Associates, L.L.C., caused to have served the Appellant's Final Brief and Final Reply Brief on counsel for the Respondents by depositing a copy of it in the United States Mail, postage prepaid, on May 19, 2014, addressed to Robert E. Stepp, Esquire & Bess J. DuRant, Esquire, Sowell Gray Stepp & Lafitte, LLC, 1310 Gadsden Street, Columbia, South Carolina 29201

May 19, 2014



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